

Deposition of Al Beamer

[Sheet 27, Page 105]

1 A. At what point was it?

2 Q. The last one.

3 A. The last one meaning Exhibit G?

4 Q. Yeah, G.

5 A. Exhibit G didn't reference termination or

6 didn't reference the end of it.

7 Q. Was there another employment contract after

8 this?

9 A. No.

10 Q. Well, somewhere in your complaint you've

11 alleged that the contract was supposed to go through the

12 end of December of 2000. What's that based on?

13 A. It was based on a previous amendment.

14 MR. HABER: F, I believe. I'm sorry. It's

15 E.

16 THE WITNESS: Right.

17 MR. HABER: I apologize.

18 A. The contract extension, Defendant's Exhibit E,

19 is where it has the -- the term, at that point.

20 Q. (By Mr. Shoemaker) And this is the agreement

21 between TMC and Transcontinental, correct, Defendant's

22 Exhibit E that you're referring to?

23 A. Yes.

24 Q. And then Exhibits F and G refer to Title

25 Marketing Company but specifically refer to yourself as

[Page 107]

1 that correct?

2 A. Yes, I am.

3 Q. As far as between NETCO and TTC, right?

4 A. You're asking if I had signed extensions

5 beyond or several extensions with -- with NETCO, and in

6 fact, I'm saying I had not.

7 Q. And you were referencing Exhibit A as the only

8 compensation package you had signed with NETCO which at

9 that point was still Equity Title prior to the split, is

10 that accurate?

11 A. Yes.

12 Q. Had you discussed with TTC or specifically

13 Bill Baumgart any extension of that contract past

14 December 31 of 2000?

15 A. Not in specific terms.

16 Q. Well, did you talk about it in general terms?

17 A. Yes.

18 Q. With who?

19 A. Bill Baumgart.

20 Q. What was stated?

21 A. What was stated was that he was happy with my

22 performance and hoped that the -- the relationship

23 between Transcontinental and -- and me would continue

24 for a long time.

25 Q. When did he tell you that?

[Page 106]

1 being employed there, is that correct?

2 A. Yes.

3 Q. But it was your understanding that Defendant's

4 Exhibit E continued the entire relationship through

5 December 31, 2000, is that accurate?

6 A. At least.

7 Q. What do you mean at least?

8 A. I had always signed extensions every two or

9 three years. I had every expectation that I would

10 continue to sign extensions beyond 2000.

11 Q. Well, you had always signed extensions with

12 NETCO prior to March of '99, too, hadn't you?

13 A. No.

14 Q. Oh. You hadn't?

15 A. No.

16 Q. How many contracts had you signed with them?

17 A. I signed one.

18 Q. In '99? That's the first contract you signed?

19 A. The compensation contract -- the only

20 compensation contract I ever had with NETCO -- I never

21 had any compensation contract with NETCO. The only

22 compensation contract with any part of NETCO was the one

23 in '93.

24 Q. Okay. So you're differentiating between

25 employment agreements and compensation agreements, is

[Page 108]

1 A. December 1st of 1999.

2 Q. And where did he tell you that?

3 A. Over dinner. I don't remember the name of the

4 restaurant.

5 Q. What city?

6 A. Clearwater, Florida.

7 Q. Was anyone else present?

8 A. No.

9 Q. And it was at that point he told you he was

10 happy with your services and he hoped that the

11 relationship continued for a long time; is that what you

12 stated?

13 A. Yes.

14 Q. Did you and Bill Baumgart discuss your

15 interest -- and I'm jumping around here a little bit,

16 but while we're on the topic of dinner with Bill

17 Baumgart, did you guys discuss your interest in National

18 Real Estate at that point?

19 A. Yes.

20 Q. What was said in that regard?

21 A. That -- that National Real Estate had nothing

22 to do with competing with Transcontinental and that it

23 was all a matter between myself and his brother, John,

24 and that he was tired of hearing about it and he wanted

25 to definitively say that there -- he did not want to

Deposition of Al Beamer

[Sheet 28, Page 109]

1 hear any more about it from anyone.

2 Q. Did you inform him that you had an ownership

3 interest in National at that point?

4 A. Previous to that point, I had already

5 informed him of that, yes.

6 Q. And that you were providing all the computer

7 software and so forth for National as well, correct?

8 A. Yes.

9 Q. Did Bill Baumgart ever reference his ownership

10 in Southeast Equity Title or Equity Title Southeast,

11 whichever it is, at that time to you in December of '99?

12 A. Absolutely not.

13 Q. Do you know a gentleman by the name of Damian

14 Sichak?

15 A. Sichak.

16 Q. Sichak. How do you spell that?

17 A. S-I-C-H-A-K. Yes.

18 Q. And how do you know him?

19 A. I knew him when he was at NETCO, and then he

20 left NETCO and went to work for Transcontinental, and

21 then he left Transcontinental and went to work for

22 National Real Estate.

23 Q. When did he leave Transcontinental and go to

24 work for National Real Estate?

25 A. Late '99.

[Page 110]

1 Q. Prior to your dinner with Bill on December 1st

2 of '99?

3 A. I believe so. I -- I'm not certain of that,

4 but I believe so, yes.

5 Q. Well, do you recall discussing his departure

6 with Bill Baumgart during that dinner?

7 A. No.

8 Q. Was Bill Baumgart upset about the fact that he

9 had left TTC to go to National?

10 A. As I recall, I don't recall discussing that.

11 I think that was between Damian and Bill.

12 Q. So you don't recall ever discussing Damian's

13 departure with Bill, is that accurate?

14 A. I'm sure that was mentioned in some

15 conversations between Bill and I, but the -- the -- it

16 wasn't discussed that night at dinner because I believe

17 he was already gone.

18 Q. Did Bill ask you if National was competing

19 with Transcontinental at that time?

20 A. Did he ask me if they were?

21 Q. Yes.

22 A. Not at that point because he already knew that

23 they were not.

24 Q. Did he ever tell you that if you were

25 competing against him that you'd be fired?

[Page 111]

1 A. No.

2 Q. Did he ask you if you had an ownership

3 interest in National, or did you just inform him of that

4 on your own?

5 A. I informed him of that.

6 Q. And when did you do that?

7 A. Oh, a couple of weeks before the -- the

8 meeting in December or maybe -- maybe a month before. I

9 don't know. Whenever it was that I got the ownership

10 interest, I informed him of it.

11 Q. What was your title with TTC as of December 1

12 of '99?

13 A. The same as it had always been, executive

14 vice-president of information systems.

15 Q. Okay. And had your duties expanded as of 12/1

16 of 99 from what they were, say, in 1996?

17 A. TTC was a much bigger company at that point,

18 so I had responsibility over more computers and more

19 users, but I -- but they were principally the -- the

20 same type of responsibilities.

21 Q. Which came first regarding your increased

22 duties with TTC? Did you decide you were going to leave

23 your employment at NETCO and then increase your services

24 to TCC -- TTC, I'm sorry, or was it the other way? Did

25 you increase your services for TTC and then decide you

[Page 112]

1 were leaving NETCO?

2 A. I don't know that it was either one. I -- it

3 started from a conversation with Bill Baumgart in which

4 he said that TTC was paying me a lot of money, yet it

5 seemed that I was working -- that he'd like to have more

6 of my time for the amount of money that -- that they

7 were paying. He'd like to have -- like to have me in

8 Florida more than I had been up until that point,

9 basically, and so I looked at it and I realized that I

10 was getting paid more by TTC for one week a month

11 on-site and other work outside than I was getting paid

12 by NETCO for substantially more of my time than that.

13 Q. So as of March, we'll say, of '99 when you

14 were still working for both of them, although you were

15 putting in more hours at NETCO than TTC, correct?

16 A. Correct.

17 Q. But you're telling me as of March of '99 you

18 were receiving more money from TTC than NETCO, is that

19 accurate?

20 A. Yes.

21 Q. And it was at that point that you attempted to

22 negotiate an increase in the money you received from

23 NETCO, correct?

24 A. That was one of several times I had attempted

25 to negotiate an increase, but yes, I did attempt to

Deposition of Al Beamer

[Sheet 29, Page 113]

1 increase it -- to negotiate an increase at that time.
 2 Q. When did your employment end with TTC?
 3 A. December 7th of '99 or the 6th; right around
 4 the 6th or 7th of '99.
 5 Q. You don't recall which day?
 6 A. Well, I believe -- I don't recall exactly, but
 7 I believe that on the 6th I got the phone call telling
 8 me that -- the phone call from Bill Adams telling me to
 9 call Bill Curphey --
 10 MR. DIGNAM: Bill Andrews.
 11 A. I'm sorry. Bill Andrews telling me to call
 12 Bill Curphey to -- because I had been terminated by TTC.
 13 Q. (By Mr. Shoemaker) Okay. We'll get into that
 14 in a little more detail in a second.
 15 After your employment ended with TTC, did you
 16 initiate litigation against them?
 17 A. Yes.
 18 Q. The first lawsuit that you initiated against
 19 TTC was based on what?
 20 A. What were the allegations of the complaint.
 21 you're asking?
 22 Q. Yeah.
 23 A. Violation of the contract, principally.
 24 Q. What contract?
 25 A. The -- the contract as it -- as it stood

[Page 114]

1 amended at that time, at the time that I was terminated.
 2 Q. Is that Defendant's Exhibit G --
 3 A. It would be --
 4 Q. -- or does it date all the way back to
 5 Defendant's Exhibit E? Can you tell me by looking at
 6 them?
 7 MR. HABER: Legally it dates back farther.
 8 Those are all amendments.
 9 A. I was going to say. That's amendments, and it
 10 just was as to the -- the contract relationship that
 11 stood at the time it was terminated.
 12 Q. (By Mr. Shoemaker) Okay. I'm not trying to
 13 be clever here, but this contract was extended in
 14 Defendant's Exhibit E, correct?
 15 A. Yes.
 16 Q. Which covered the relevant time period that
 17 we're discussing, is that accurate?
 18 A. It extended through November or through
 19 December of 2000.
 20 Q. Okay. Is there language in a prior agreement
 21 that's not in here that the suit was based on?
 22 A. No.
 23 Q. So the first suit was based upon the breach of
 24 your employment agreement and the relationship with TMC.
 25 is that correct?

[Page 115]

1 A. Yes, it was.
 2 Q. And did that case proceed to trial?
 3 A. No.
 4 Q. When did it settle? Did it settle, I should
 5 say?
 6 A. It settled in the spring of 2001.
 7 Q. And how much did you settle for?
 8 MR. HABER: Let me stop you there for a
 9 second. Let's go off the record. Well, we can stay on
 10 the record.
 11 MR. SHOEMAKER: We can go off if you want. I
 12 don't care.
 13 MR. HABER: We can stay on and then go off
 14 and decide how you want to resolve it. I don't know
 15 whether I inadvertently provided that to you
 16 previously, but those settlement agreements with TTC
 17 were subject to a confidentiality agreement which I
 18 assume Bill Baumgart would have no objection to a
 19 limited waiver of that confidentiality for purposes of
 20 you exploring the mitigation issue, but without that --
 21 and he may have already told you the terms, but without
 22 that, I'm concerned that he might be in violation of
 23 that agreement by disclosing the terms of the
 24 settlement. Now, if you'd like to go off the record
 25 and discuss how to resolve that, I mean, we don't -- I

[Page 116]

1 don't have any personal objection to you knowing the
 2 terms provided that we're not going to be in -- and if
 3 I inadvertently provided that to you previously, that
 4 was my fault.
 5 MR. DIGNAM: I think Bill may have provided
 6 it to me, but I don't know.
 7 MR. SHOEMAKER: Let's go off the record.
 8 (There was a discussion off the record.)
 9 MR. SHOEMAKER: We can go back on the record.
 10 During our break which was somewhat initiated
 11 by discussions of settlement agreements between
 12 Mr. Beamer and Transcontinental Title, we were
 13 discussing the first settlement agreement which does not
 14 have a confidentiality provision as we'll enter here in
 15 a second, but a second settlement agreement between
 16 Mr. Beamer and TTC did have a confidentiality provision
 17 pursuant to the recollection of Mr. Beamer and
 18 Mr. Haber, so pursuant to that representation, I
 19 personally spoke with Bill Baumgart and received his
 20 verbal authorization for Mr. Beamer to discuss the
 21 contents of that settlement agreement for the limited
 22 purposes of this lawsuit that is pending. Is that --
 23 MR. HABER: Based upon your representation
 24 and that close familial relationship between Bill
 25 Baumgart and the defendant John Baumgart, since they

Deposition of Al Beamer

[Sheet 30, Page 117]

1 are brothers, I will permit my client to answer those
2 questions in light of your representation that Bill
3 Baumgart has approved his limited disclosure of the
4 terms of the settlement agreement. However, I would
5 ask that provisionally this portion of the deposition
6 be maintained confidential or under seal pending
7 confirmation when we meet with Mr. Baumgart down in
8 Clearwater for his deposition that he, in fact, has
9 provided that limited waiver. Then at that point I
10 don't think there's any need to -- to maintain the
11 provisional confidentiality of this section of the
12 deposition.

13 MR. SHOEMAKER: That is agreed to on behalf
14 of all defendants.

15 (Defendant's Exhibits H and I were marked for
16 identification.)

17 Q. (By Mr. Shoemaker) Okay. I'm going to show
18 you what's been marked -- I'm going to give it to you as
19 a set, Defendant's Exhibits H and I, Mr. Beamer. Can
20 you tell me what those documents represent?

21 A. They are the settlement agreement and mutual
22 release of the -- the first case of myself and TMC
23 against TTC.

24 MR. HABER: And just for the record, the
25 mutual release which is Defendant's Exhibit I is also

[Page 119]

1 A. Yeah. I should explain. I received the full
2 80,000, or the full 80,000 that is stated on the
3 settlement agreement was paid. Then I paid my attorney
4 or my -- my attorney took his share out, and I, Title
5 Marketing and I ended up receiving something less than
6 60,000.

7 Q. (By Mr. Shoemaker) Okay. After attorneys'
8 fees?

9 A. After attorneys' fees.

10 Q. But the settlement agreement is for 80,000, is
11 that correct?

12 A. That's true.

13 Q. In addition, paragraph 4 of the settlement
14 agreement refers to TTC's authorization to use TMC's
15 Title Works software through August 31, 2001, is that
16 correct?

17 A. Yes.

18 Q. And then as a provision that if they're still
19 using it after September 1, 2001 that they have to pay
20 TMC a licensing fee that's set forth in that agreement,
21 is that accurate?

22 A. Yes.

23 Q. So your initial contract that you referred to
24 only extended through December 31 of 2000, is that
25 accurate?

[Page 118]

1 Exhibit A to Defendant's Exhibit H with the exception
2 that Exhibit A does not have Mr. Beamer's signature --

3 MR. SHOEMAKER: Correct.

4 MR. HABER: -- or his wife's signature as
5 president of Title Marketing.

6 Q. (By Mr. Shoemaker) And this represents the
7 settlement agreement in Case No. 002310C119 from the
8 Circuit Court, Civil Division of Pinellas,
9 P-I-N-E-L-L-A-S, County in Florida, is that correct,
10 Mr. Beamer?

11 A. Yes.

12 Q. And that was a lawsuit styled Al Beamer and
13 Title Marketing Company, Inc., a Missouri Corporation,
14 v. Transcontinental Title Company, f/k/a Equity Title
15 Company/Southeast, a Florida Corporation, is that
16 correct?

17 A. Yes.

18 Q. This settlement agreement was dated April
19 16th, 2001, is that correct, Mr. Beamer?

20 A. Yes.

21 Q. And how much did you receive as a result of
22 this settlement agreement from TTC?

23 A. I received a bit less than \$60,000.

24 MR. HABER: And by you, you mean him
25 personally or collectively him and his attorney?

[Page 120]

1 A. Yes. The written terms of that contract
2 extended through December 31 of 2000.

3 Q. But the settlement agreement actually
4 extended -- well, strike that.

5 The \$80,000 that you received in this
6 settlement agreement also included TTC's right to use
7 the Title Works software through August 31, 2001, is
8 that correct?

9 A. Yes.

10 Q. You were not to receive or TMC was not to
11 receive any additional monies for the use of that
12 software unless they were still using it as of September
13 1, 2001, correct?

14 A. Correct.

15 Q. And you did have counsel for this agreement,
16 correct?

17 A. Yes.

18 Q. And this settlement agreement constituted your
19 agreement as to all facets of the case that was pending
20 in Pinellas County that I previously cited, is that
21 accurate?

22 A. Yes.

23 Q. And that case that we're referring to in
24 Pinellas County was filed based upon the cessation of
25 your employment at TTC, correct?

Deposition of Al Beamer

[Sheet 31, Page 121]

1 A. It was based upon the complaint in that case.
 2 It was based upon the -- the violation of that -- the
 3 terms of that contract by the -- by the termination
 4 prior to the -- the end of the -- of the written term of
 5 the contract, yes.

6 Q. Okay. The second settlement that we've just
 7 discussed on the record, when was that lawsuit filed
 8 that ended in another settlement with Transcontinental
 9 Title?

10 A. It was filed in 2002. I don't -- I don't
 11 remember exactly -- I don't think I could even give you
 12 a month. I could research and find out when it was
 13 filed, but I know it was filed in 2002.

14 Q. Can you tell me the -- what the general nature
 15 of the allegations were in that lawsuit?

16 A. Yes. It was -- the allegation was that TTC
 17 had violated section 4 of the settlement agreement in
 18 the original case.

19 Q. Which is Defendant's Exhibit H, is that
 20 correct?

21 A. Yes.

22 Q. And was the nature of that lawsuit that TTC
 23 had continued to use the Title Works software after
 24 September 1 but did not pay you for that?

25 A. Yes.

[Page 123]

1 A. They -- they were still using it at the time
 2 of my last -- at the time of the -- the negotiations
 3 when we settled the case.

4 Q. Did the settlement agreement -- well, let me
 5 get to -- the second lawsuit was ultimately settled,
 6 correct?

7 A. Yes.

8 Q. When was it settled?

9 A. In the spring of this year; February or March
 10 of 2003.

11 Q. Does the second settlement agreement allow TTC
 12 to continue to use the Title Works software as
 13 necessary?

14 A. Yes.

15 Q. So it satisfied all claims or potential claims
 16 or future claims you had against TTC regarding the use
 17 of the software?

18 A. It did, yes.

19 Q. And how much was that for?

20 A. \$275,000.

21 Q. And that covers the time frame beginning in
 22 October of 2001 through today or any other day, really,
 23 is that correct?

24 A. Yes.

25 Q. All right. Let's talk about your involvement

[Page 122]

1 Q. When you filed the lawsuit, whenever it was in
 2 2002, was it your understanding at the time of filing
 3 that TTC was continuing to use that -- your Title Works
 4 at that time?

5 A. Yes.

6 Q. Prior to the filing of this lawsuit, did you
 7 receive monies from Transcontinental Title for the use
 8 of the Title Works Suite software in September of 2001?

9 A. Yes.

10 Q. So is it accurate to say -- well, is that the
 11 only check you received from TTC after the settlement
 12 regarding the use of that software prior to the
 13 settlement?

14 A. After the first settlement and before the
 15 second case, yes.

16 Q. Okay. So was your suit based upon TTC's use
 17 of Title Works from October 1, 2001 through a certain
 18 time period?

19 A. ~ It was beginning October 1, 2001 through
 20 whatever time either the case went to trial or they
 21 ceased using the software.

22 Q. Okay. When did they cease using the software,
 23 do you know?

24 A. As far as I know, they haven't.

25 Q. They still use it?

[Page 124]

1 with National Real Estate title agency. When did you
 2 first speak with Mr. Rivera, Anthony Rivera, regarding
 3 the possible formation of a company?

4 A. It's Antonio Rivera, I believe. He called me
 5 one day in 1999 to tell me that he had quit NETCO, and
 6 then we talked after that. I think he had quit NETCO
 7 just within the past few days and that he was trying to
 8 figure out what he wanted to do from then, and so he
 9 ticked off a bunch of options, and forming his own title
 10 company was one of those options.

11 Q. Was that in August of 1999?

12 A. It could well have been in August.

13 Q. Do you not recall when it was?

14 A. I don't recall a specific date. I know it was
 15 in the summer of '99, and I know that it was started by
 16 him calling after he had -- had quit NETCO. By looking
 17 through the pleadings of the NETCO/Rivera case, I could
 18 find out what date that was, but I don't off the top of
 19 my head remember a date.

20 Q. You're telling me right now you don't recall,
 21 but it could have been June or even May of '99, is that
 22 accurate?

23 A. No. I would say August sounds right, toward
 24 the end of that summer.

25 Q. Okay. What was Rivera's position with NETCO?

Deposition of Al Beamer

[Sheet 32, Page 125]

1 A. At that point I believe he was state manager
2 in Ohio.

3 Q. Okay. And from what you previously told me
4 regarding employment contracts at NETCO, is it safe to
5 assume you were aware Rivera had an employment contract
6 with NETCO?

7 A. Yes.

8 Q. Did you discuss that with him in that initial
9 conversation?

10 A. No.

11 Q. When -- when was the next conversation you had
12 with Rivera after that initial conversation?

13 A. Oh, a few days or a week after that initial
14 one.

15 Q. And what was discussed at the second
16 conversation?

17 A. Again, just generally how was he feeling
18 knowing that he had been through a fairly significant
19 trauma about quitting NETCO and what was he going to do
20 next and things like that.

21 Q. What was the trauma involved?

22 A. Well, I don't know about trauma. He left
23 after apparently a big argument with John Baumgart, and
24 so he was very upset that he had put in a lot of time
25 and effort and at one point had -- had hoped to stay

[Page 127]

1 Q. Okay. During the second conversation which
2 you said was a few weeks after that, would that still be
3 somewhere in August or do you recall?

4 A. I believe I said a few days to a week after
5 that, and so it was -- I would guess that that was still
6 August or early September.

7 Q. Okay. Where did that conversation take place?
8 Was it on the phone, or did you meet?

9 A. On the phone.

10 Q. And did he discuss in any more detail his
11 desire to establish a new business?

12 A. He hadn't discussed in any detail the first
13 time his desire to establish a new business. That was
14 just one of the options thrown out among quite a few.

15 Q. Did you discuss it during the second
16 conversation?

17 A. I don't believe so. Not in the second
18 conversation, no.

19 Q. When is the first time you discussed the
20 potential or desire for Mr. Rivera to open up his own
21 business in Ohio?

22 A. It was quite a while after he left because at
23 first when he left, he -- his intention was to go to
24 Costa Rica and open up a title insurance agency in Costa
25 Rica, and it was only after he had some of these other

[Page 126]

1 with NETCO for a long time and that he was very
2 disappointed and angry that -- that it all had come
3 apart like it had.

4 Q. Did you have a lot of dealings with Mr. Rivera
5 while you were employed at NETCO?

6 A. I had dealings with him, but he was one of
7 quite a few state managers.

8 Q. Your relationship with him, was it any
9 stronger than it was with most state managers?

10 A. It was certainly no worse than others, but I
11 had -- I had known other state managers longer than I
12 had known Tony Rivera. I had deeper roots with some of
13 them.

14 Q. Well, do you have any idea why he called you
15 after his employment terminated with NETCO?

16 A. He didn't call me immediately. He called me a
17 few days after. I'm sure he called quite a few people.
18 I was among them.

19 Q. Was he looking for employment?

20 A. No. I mean, he was -- he needed to do
21 something, obviously, to support himself, but he wasn't
22 looking for me to employ him.

23 Q. Did he ask you in the initial conversation if
24 you'd be interested in investing in a new company?

25 A. No.

[Page 128]

1 options that he decided that he was not going to follow
2 up on that. He then came to the idea of -- of opening
3 up a title insurance agency as -- as the best option.

4 Q. So when you say quite a while, what do you --
5 what are you talking about, a month, two months, three
6 months?

7 A. A couple months, probably.

8 Q. At least two?

9 A. This is in 1999 and we're in 2003. As to
10 exactly when I talked to him and exactly at what point
11 the idea of opening up a title insurance agency came
12 to -- to the top of his list of alternatives, I can't
13 tell you which -- what day that was.

14 Q. So are you telling me as we sit here today you
15 don't remember if it was more or less than two months
16 after your initial conversation with him?

17 A. True.

18 Q. Do you recall if it was more or less than one
19 month?

20 A. My -- I would be guessing. I -- I believe --

21 Q. I'm not asking you to guess, Mr. Beamer, so
22 you can stop with your answer. What I'm asking you is
23 if you recall as we sit here today. I realize it was
24 four years ago.

25 A. Yeah.

Deposition of Al Beamer

[Sheet 33, Page 129]

1 Q. But this is obviously something that you've
2 discussed before and that you filed a suit on, so based
3 on that, I'm asking you sitting here do you recall if it
4 was more or less than a month when he told you that he
5 wanted to start a business in Ohio?

6 A. No. I don't recall.

7 Q. Okay. Did you meet with Mr. Rivera and James
8 Erwin at any time in person?

9 A. Yes.

10 Q. Do you recall when that meeting took place?

11 A. The fall of 1999.

12 Q. Was it after the first conversation that you
13 had with Rivera?

14 A. Yes.

15 Q. How long after?

16 A. I believe it would have been in October.

17 Q. Okay. Is that the first face-to-face meeting
18 that you had had with Rivera since his -- the end of his
19 employment with NETCO?

20 A. I believe so, yes.

21 Q. At that meeting was the formation of a company
22 in Ohio discussed between yourself, Mr. Rivera, and
23 Mr. Erwin in any way?

24 A. Yes.

25 Q. Where -- what was the status of things at that

[Page 131]

1 Q. Okay. What did you express to him prior to
2 that meeting with Mr. Erwin in October that your
3 interest was?

4 A. I said I'd listen and see what he was going to
5 do. I liked Tony as a friend and wanted to see what he
6 was doing, and I hoped that he did well.

7 Q. Did you review the contents of your employment
8 agreement with NETCO at that time?

9 A. No.

10 Q. Did you think you would be in violation of the
11 agreement if you started up a new company?

12 A. I thought that I would not be in violation as
13 long as my involvement with anything was beyond six
14 months from my termination date at NETCO.

15 Q. Your involvement meaning when the company
16 opened, or what do you mean by your involvement?

17 A. My -- my involvement with what?

18 Q. With the new company.

19 A. I believed that as long as the new company --
20 certainly as long as the new company was not open within
21 those six months that there would not be a violation of
22 that agreement and there, in fact, was no problem about
23 that.

24 Q. So what -- what was the next step in this
25 process after you met with Mr. Erwin in October of 2000?

[Page 130]

1 point?

2 A. It was in the very early stages. We were
3 just -- James Erwin didn't even know entirely what a
4 title insurance agency -- he knew what they were. He
5 had dealt with them in the past, but he didn't know how
6 they made money and how the -- what the mechanics were
7 of a title insurance agency, so we were sort of
8 educating him about what the title insurance business
9 was about to see if he might be interested.

10 Q. So when you talk about educating Mr. Erwin
11 about it, I assume that you and Mr. Rivera had had some
12 conversations about this business in Ohio prior to this
13 day in October when you met with Mr. Erwin, correct?

14 A. Yes. We had had conversations where
15 Mr. Rivera talked about the possibility of opening a
16 title insurance agency by then.

17 Q. And you must have expressed some interest at
18 that point, correct?

19 A. Yes.

20 Q. Had you told him that you would provide
21 financial assistance at that point?

22 A. No.

23 Q. Had he asked you about that, whether you would
24 provide financial assistance?

25 A. Not at that point.

[Page 132]

1 Is that the right month? It's not. October of 1999. I
2 apologize.

3 A. The next step in what process?

4 Q. Of forming National Real Estate.

5 A. There were other phone conversations among
6 Mr. Rivera and Mr. Erwin and then Mr. Rivera and myself,
7 all three of us.

8 Q. When did you ultimately decide to become a
9 part of National Real Estate?

10 A. At some point in October of '99.

11 Q. Was Mr. Erwin receptive to the idea at your
12 meeting with him in October?

13 A. He was interested in looking into it. There
14 was no agreement made at that point.

15 Q. Who ultimately contributed financially to the
16 opening of National Real Estate?

17 A. James Erwin, Tony Rivera, and Damian Sichek
18 and I.

19 Q. And the meeting that you had with Erwin that
20 you mentioned in October of 1999, after that meeting
21 would it be fair to say that things happened pretty
22 quickly?

23 A. Yes.

24 Q. Did Erwin agree to participate soon after that
25 meeting with him in early October?

Deposition of Al Beamer

[Sheet 34, Page 133]

1 A. Yeah. Erwin did agree at some point in
2 October. I'm not sure whether it was early or mid or
3 exactly what the date was that he agreed, but he did
4 agree.

5 Q. Do you know when the articles of incorporation
6 were filed in the state of Ohio by Antonio Rivera?

7 A. No.

8 Q. Prior to the meeting with Erwin in October of
9 1999, did Mr. Rivera ever inform you that he had filed
10 the articles of incorporation in the state of Ohio?

11 A. I don't know that I knew it at that time, but
12 I did later find out that he had already or that he had
13 filed articles of incorporation.

14 Q. Well, doesn't that seem like something he
15 would tell you if you guys were talking about starting a
16 business?

17 A. Maybe. I don't remember him saying that. I
18 believe he did that on his own.

19 Q. But you're telling me you hadn't agreed to
20 become part of National until October of 1999, correct?

21 A. Correct.

22 Q. Did you have a formal title at National?

23 A. I don't believe so.

24 Q. You mentioned Mr. -- how do you spell or
25 pronounce Sichak again?

[Page 135]

1 we're on J.

2 (Defendant's Exhibit J was marked for
3 identification.)

4 Q. (By Mr. Shoemaker) Do you recognize
5 Defendant's Exhibit J, Mr. Beamer?

6 A. Yes.

7 Q. What is it?

8 A. It's called a preorganization subscription
9 agreement.

10 Q. This document is dated October 21 of 1999 but
11 does not include the signatures of the four owners that
12 we previously described, including yourself. Was this
13 document signed either on October 21st or very near
14 that?

15 MR. HABER: Let me object. It also has a fax
16 ledger up at the top dated November 1st, 1999 coming
17 from a Cincinnati area code, and the document is page 2
18 and 3 of a 6 -- of a 26-page fax.

19 MR. SHOEMAKER: Okay. And for the record,
20 I'll just state this is a document I received from you.

21 MR. HABER: Absolutely. No question about
22 it.

23 MR. SHOEMAKER: So I'm not sure where any of
24 that came from, not to mention I received it today.
25 Let me ask you this.

[Page 134]

1 A. Sichak.

2 Q. Sichak?

3 A. Yes.

4 Q. You referenced that Mr. Sichak, Mr. Erwin,
5 yourself, and Mr. Rivera were the four owners, is that
6 correct?

7 A. Yes.

8 Q. Did you contribute equal amounts of money?

9 A. No.

10 Q. How much did each person contribute?

11 A. I believe James Erwin contributed \$40,000, I
12 contributed \$20,000, Tony Rivera contributed \$10,000,
13 and Damian Sichek contributed \$5,000 or something like
14 that to begin with.

15 Q. Were you all to have the same voting
16 authority?

17 A. Yes.

18 Q. So as far as a vote goes, you had a 25 percent
19 say in what happened, is that accurate?

20 A. As far as I -- I was to own 25 percent of the
21 shares of -- of the company.

22 Q. Voting shares?

23 A. Voting shares.

24 Q. Okay.

25 MR. SHOEMAKER: Mark that, please. I think

[Page 136]

1 MR. HABER: You asked if this document was
2 signed in October, and since there's a fax ledger on
3 this document of November 1st and it's unsigned, I
4 wanted the record to be clear. My client believes
5 there is a signed copy of it; he just couldn't find it.

6 MR. SHOEMAKER: Okay. That's actually where
7 I was headed. That's fine.

8 Q. (By Mr. Shoemaker) Was there a copy -- strike
9 that.

10 Was there a version of this that was signed on
11 October 21st, 1999?

12 A. I don't believe it was signed on October 21st
13 of 1999. There was a version of this with some of --
14 some corrections that was signed at some point, and I --
15 I believe it was a part of the NETCO versus Rivera
16 lawsuit file. I couldn't find it in my -- in my files.

17 Q. Do you recall signing a document obviously
18 similar to this, identical to this, I'll say, prior to
19 November 1 of '99?

20 A. It wasn't identical because it contained a
21 correction, but it -- it was substantially similar to
22 this, and I would have signed it sometime in -- in late
23 October of '99 or early -- early November of '99.

24 Q. When you say it contained the correction, can
25 you tell me what you're referring to?

Deposition of Al Beamer

[Sheet 35, Page 137]

1 A. Yes. On the page -- the second page of the
2 two pages that you've handed me, there's a circle around
3 30 common shares and the notation 40 and a circle around
4 \$30,000 and the notation 40, and I believe those --
5 those changes were made as to 40 common and \$40,000.

6 Q. Did you actually put \$40,000 into this
7 company?

8 A. No.

9 Q. Why does it say -- why are you saying that it
10 ultimately read \$40,000 as amount subscribed?

11 A. Because I -- my contribution was \$20,000 in
12 cash along with the Title Works Suite of computer
13 programs.

14 Q. Okay. So am I to understand that your
15 contribution was \$20,000 in cash, and then your software
16 contribution was also valued at \$20,000 to equal
17 \$40,000?

18 A. Yes.

19 Q. Which was the same amount that Mr. Erwin had
20 subscribed and Mr. Rivera had subscribed, and Mr. Sichak
21 had subscribed only \$10,000, is that correct?

22 A. Yes. I stand corrected as to my earlier
23 statement when I had said that Mr. -- as to the amount
24 of cash contributed by Damian Sichek. I believe I had
25 said 5, and in fact, it's 10.

[Page 139]

1 A. No.

2 Q. Who prepared it?

3 A. Tony Rivera.

4 Q. Do you know when that was prepared?

5 A. No.

6 Q. Does October 27th sound familiar to you?

7 A. I don't recall a date. That would be in line,
8 roughly, with the time line of the -- getting the agency
9 agreement, but I don't know specifically when it was
10 prepared.

11 Q. It would make sense it was prepared before
12 National opened its doors on November 1st, wouldn't it?

13 A. Yes.

14 Q. Did you consider NETCO to be a competitor as
15 of November 1st, 1999?

16 MR. HABER: A competitor with whom?

17 A. A competitor with whom?

18 Q. (By Mr. Shoemaker) With National, I'm sorry.

19 A. I -- they were a potential competitor. I
20 wanted to make sure that the -- that there was not
21 competition for NETCO's customers as of the time that
22 National Real Estate opened and was in business for the
23 first few months.

24 Q. Well, are you aware that the business plan
25 submitted by Mr. Rivera referred to NETCO as a major

[Page 138]

1 Q. So this document is correct, not your earlier
2 testimony, correct?

3 A. I believe so. Actually, it does state that
4 the contribution would be in the amount of 10,000. Half
5 would be on November 1st and the balance before December
6 1st, so that's where I got the 5,000 number.

7 Q. Okay. So you admit that you signed this
8 agreement at some point, you just don't recall exactly
9 when, is that correct?

10 A. Yes.

11 Q. But you don't think it was October 21st of
12 1999?

13 A. No, I don't.

14 Q. Are you aware of a business plan that was
15 prepared for National Real Estate?

16 A. I'm aware of a -- a document named business
17 plan that Tony Rivera prepared, but it was not a
18 business plan for National Real Estate.

19 Q. ~ What was it?

20 A. It was a document required by a title
21 insurance underwriter to be completed in order to apply
22 for a title insurance agency with that underwriter.

23 Q. Did you see that document?

24 A. I have seen it.

25 Q. Did you see it at the time it was prepared?

[Page 140]

1 competitor?

2 A. I believe I saw that afterwards, and I -- I
3 would say that eventually NETCO would have become a
4 competitor, but the -- the terms of the plans for
5 operation for National Real Estate to avoid NETCO's
6 customers during the -- the first few months of -- of
7 operation would have precluded there being any actual
8 competition.

9 Q. Why do you say the first few months?

10 A. Because the plan was to avoid NETCO's
11 customers during the term of Tony Rivera's six month
12 employment agreement.

13 Q. And then after the six months were up to go
14 after NETCO customers?

15 A. After the six months were up, then the plan
16 would be to go after whatever business was there.

17 Q. Did you provide anyone at National a list of
18 NETCO's customers?

19 A. Absolutely not.

20 Q. Did anyone provide -- well, did you ever see a
21 customer list of NETCO's used at National?

22 A. No.

23 Q. Well, how would you possibly be aware of who
24 their customers were, then?

25 A. Tony Rivera knew who their customers were in

Deposition of Al Beamer

[Sheet 36, Page 141]

1 general.

2 Q. Didn't you have other people working there

3 besides Mr. Rivera?

4 A. There were other people working there.

5 Q. How about Maria Sagrati? Do you know her?

6 A. Yes.

7 Q. Was she employed at National?

8 A. Yes.

9 Q. When did she begin her employment?

10 A. Roughly the time that they opened the doors.

11 Q. Okay. Was she a prior employee of NETCO?

12 A. No.

13 Q. Did you ever personally discuss NETCO's

14 clients with Miss Sagrati?

15 A. No.

16 Q. Do you know if Mr. Rivera ever discussed

17 NETCO's customers with Miss Sagrati?

18 A. The agreement was Miss Sagrati would --

19 Q. I'm going to ask you just to respond to the

20 question. Do you know if, in fact, Mr. Rivera spoke

21 with Miss Sagrati regarding NETCO's customers?

22 A. I -- I needed the --

23 MR. HABER: Do you know whether he did or he

24 didn't is the question. If you then want to clarify it

25 through your response, you can do that.

[Page 142]

1 MR. SHOEMAKER: I'm all for that.

2 Q. (By Mr. Shoemaker) It's a yes or no question.

3 You can certainly clarify it when you're done answering

4 it, Mr. Beamer.

5 A. Yes. I assume that they --

6 Q. I didn't ask you what you assumed. I asked

7 you what you know.

8 MR. HABER: He wants personal knowledge.

9 A. I know they talked about NETCO's customers.

10 Q. (By Mr. Shoemaker) Would you like to clarify

11 it?

12 A. Yes, please.

13 Q. Feel free.

14 A. The agreement as to the way that National was

15 going to do business and seek customers was that Maria

16 was going to be the only salesperson, the only contact

17 person for National Real Estate, that Mr. Rivera was not

18 going to contact any customer, whether it was NETCO's

19 or -- or anyone else, and that when Maria came up with

20 someone that she was wanting to contact to pursue

21 business that she would run that name past Mr. Rivera

22 first to make sure that they were not a NETCO customer

23 before she went out to talk to them.

24 Q. Okay. Were you present when this agreement

25 was made between Miss Sagrati and Mr. Rivera?

[Page 143]

1 A. I don't know that I was present. It might

2 have been over the phone.

3 Q. Did you hear it?

4 A. I was a part of making that, yes.

5 Q. So you're telling me there was a deal, and I

6 don't mean any -- an agreement, I'll say, not a deal,

7 that you heard between Miss Sagrati, Mr. Rivera, and

8 yourself. Was Mr. Erwin part of this conversation as

9 well?

10 A. I don't recall.

11 Q. Which stated that any time Miss Sagrati --

12 I'll restate that.

13 Prior to Miss Sagrati contacting any customer,

14 she would run it by Mr. Rivera to make sure it wasn't a

15 NETCO customer?

16 A. That was my understanding.

17 Q. Well, that's your understanding. Is that what

18 was said?

19 A. Yes.

20 Q. Are you aware if that actually occurred?

21 A. I hope it did. I believe it did.

22 Q. Certainly you're aware that in the Rivera case

23 that was filed that Miss Sagrati was found to have

24 contacted numerous NETCO customers. Are you not aware

25 of that?

[Page 144]

1 A. I believe there was a -- there's certainly a

2 difference of opinion as to what type of entity

3 constitutes a NETCO customer. NETCO drew that as a

4 very, very broad net to cover wholesale lenders, retail

5 lenders, brokers and everybody they had ever talked to,

6 gotten an order from, written a policy for, a very wide

7 net, and that the -- what I understood to be NETCO

8 customers was -- did not include those customers.

9 Q. All right. My opinion or your opinion isn't

10 necessarily what I'm asking. What I'm asking you is if

11 you are aware that the Court determined that

12 Miss Sagrati had contacted NETCO customers. As we sit

13 here today, are you telling me you're not aware of that

14 fact?

15 A. No. I'm saying -- you're saying am I

16 agreeing?

17 Q. I didn't ask if you agreed.

18 MR. HABER: Listen to the question. The

19 question is did the Court --

20 Q. (By Mr. Shoemaker) I'm not trying to confuse

21 you, Mr. Beamer. Let me rephrase it.

22 Are you aware as you sit here today if the

23 Court determined that Miss Sagrati contacted NETCO

24 customers during that time frame of November of 1999?

25 A. I do understand that the Court made such a

Deposition of Al Beamer

[Sheet 37, Page 145]

1 finding.

2 Q. Okay. After the Court made a finding in that
3 regard, did you have a conversation with Miss Sagrati or
4 anyone else regarding her continued contact with NETCO
5 customers?

6 A. I'm not sure at what point the Court made that
7 finding. It was always my understanding and direction
8 to the extent that I had any say in it that National
9 Real Estate not contact NETCO customers, but that was my
10 statement to Miss Sagrati, to Mr. Rivera, to whoever
11 would listen.

12 Q. Did you know who NETCO's customers were --

13 A. No.

14 Q. -- in Ohio?

15 A. No.

16 Q. You didn't have any idea?

17 A. Well, I mean, I would have assumed that
18 they -- that there were some customers that were
19 customers of NETCO in several states, but I didn't know
20 specifically who those customers were.

21 Q. But you understood that Mr. Rivera did?

22 A. I understood that Mr. Rivera knew or should
23 have known who the customers were.

24 Q. But to your knowledge, there was never a list
25 drafted by Mr. Rivera that stated these are all

[Page 147]

1 A. Well, some of the function of the software is
2 to do calculations of things like state deed tax, state
3 mortgage tax if there is one, a calculation of the
4 prepaid interest by the method that is typical in that
5 area. There are quite a few calculations that -- that
6 need to be done as a part of -- of preparing the -- the
7 title insurance commitment and invoice and then the --
8 the settlement statement, and the software needed to
9 have all the -- the right calculations for that area of
10 the country.

11 Q. Okay. So there's some forms that are somewhat
12 standardized for certain geographic locations, is that
13 correct?

14 A. Yes.

15 Q. And in the state of Ohio, there would be one
16 set of forms that would be needed as compared to the
17 state of Missouri, is that accurate?

18 A. There are some forms that are national forms,
19 and there are some forms that are state forms. There
20 are even some forms that are county or local forms.

21 Q. Okay. And you had -- you had already
22 previously set up this software and the forms relevant
23 to the Cincinnati area for NETCO, correct?

24 A. I had set up NETCO's software to be able to
25 handle the -- the Ohio forms, yes. I had not set up all

[Page 146]

1 potential or current NETCO customers, you shouldn't
2 contact them, Miss Sagrati?

3 A. I never saw such a list.

4 Q. Okay. What were your main duties at National?

5 A. I provided the software, and I helped to put
6 in the forms and make the software work for them.

7 Q. Okay. Did you talk to underwriters and so
8 forth like you did at TTC or NETCO?

9 A. No.

10 Q. Did you participate in the drafting or
11 formatting of these forms to comply with the
12 underwriters' requirements?

13 A. I can't remember whether I typed in any forms
14 or not. I -- some of the forms are standard national
15 forms, the American Land Title Association forms, and I
16 would have provided those.

17 Q. Well, there must be some forms that are --

18 A. There -- there were also --

19 Q. -- created or something or they wouldn't need
20 your services, isn't that correct?

21 A. There -- there was a need for forms. There
22 was a need for other programming of the -- the databases
23 in order to make that all work.

24 Q. Such as what? What do you mean the other
25 forms, the other databases?

[Page 148]

1 of the forms. There were people on staff who also knew
2 how to set up forms. I had trained them, and they set
3 up some of the forms.

4 Q. Using your system, right?

5 A. Using my software, TMC's software.

6 Q. And then you did the same thing for National
7 as far as designing and setting up these forms and
8 making the software compatible with anything else you
9 needed to do for that location, is that correct?

10 A. Well, it wasn't exactly the same thing.

11 Q. Well, tell me what differed.

12 A. The -- the -- National Real Estate had just
13 the Cincinnati area. They didn't deal -- they didn't
14 have an office in the Cleveland area, for example, so
15 there was no need to set up forms or set up calculations
16 based on the way that business is done in Cleveland.
17 The organization of the office of National Real Estate
18 because it had so few people didn't require the level of
19 complexity that it had -- that the NETCO office had with
20 a substantially larger office, not only in Cincinnati
21 but substantially larger operations in Ohio and the need
22 to connect to the entire NETCO system.

23 Q. Okay. So from what you're telling me, and you
24 can correct me, and I'm sure you will if I'm wrong. The
25 National software program that you created was a

Deposition of Al Beamer

[Sheet 38, Page 149]

1 simpler, smaller version of what the NETCO system was?

2 A. What I created for National started from my
3 bare bones title insurance, generic title insurance
4 agency package of software that I then customized to
5 what I understood to be the needs of -- of National.

6 Q. Okay. And I'm asking you any differences
7 between that and NETCO, and what my question was is was
8 it basically a simpler, smaller version of NETCO? Is
9 that an accurate statement?

10 A. No. It's not an accurate statement --

11 Q. Okay. And --

12 A. -- because --

13 Q. Go ahead.

14 A. In no way was it a version of NETCO software.
15 As I have set up software in dozens of title agencies in
16 many states, I start with a -- a simple set of databases
17 and national forms and expand on it from there to get to
18 the point to provide what they need.

19 Q. Okay. Let me ask it this way. All the forms
20 that were contained in National's package, the
21 standardized forms that you began with and the
22 information you need to, I guess, create or format these
23 forms would all be contained in NETCO's system, wouldn't
24 it? I mean, it's in the same area is what I'm getting
25 at.

[Page 151]

1 A. I'm sure I talked to title insurance agents in
2 Ohio as a result of my work for Commonwealth Title
3 Insurance.

4 Q. Did you ever implement any software there for
5 TMC in the state of Ohio prior to 1993?

6 A. No.

7 Q. Did you ever implement any software through
8 TMC in the state of Ohio prior to the time you
9 implemented software for NETCO?

10 A. Is that the same question?

11 Q. Well, I just want to clarify. I don't think
12 we established an exact date when NETCO opened -- opened
13 offices in Cincinnati. I think you said it was '97 or
14 '98. Does that sound about right?

15 A. That's a guess. Yes.

16 Q. My question is from '93 to '97 or '98, during
17 that time frame, did TMC ever or you through TMC ever
18 implement any software in the state of Ohio?

19 A. I did work with a title insurance underwriter
20 based in Ohio.

21 Q. Who was that?

22 A. National Land Title.

23 Q. Okay. Did you create a software program
24 through Title Works for their use in the state of Ohio?

25 A. No.

[Page 150]

1 A. It is in the same area, but they were to have
2 a different underwriter. The underwriters sometimes
3 required different forms, particularly as to closing
4 forms and affidavits and things like that. Each of them
5 have their own take on what they want on the affidavits,
6 and the -- so they -- they -- I started from scratch and
7 created those forms just as I would if I had opened --
8 if National had opened in Missouri or Montana.

9 Q. Can you tell me what you recall was different
10 about the underwriter from National compared to the
11 underwriters for NETCO in Ohio regarding the
12 requirements or forms they needed?

13 A. I never sat down and compared National's forms
14 to net -- to NETCO's forms. I specifically wanted to
15 avoid that.

16 Q. Prior to your employment by NETCO, had you
17 ever had any business in the state of Ohio regarding
18 title insurance?

19 A. Prior to my employment with NETCO?

20 MR. HABER: With NETCO and its predecessor,
21 Equity?

22 MR. SHOEMAKER: Sure. I think he said he
23 started in 1993. I'll clarify it.

24 Q. (By Mr. Shoemaker) Prior to 1993 did you ever
25 have any --

[Page 152]

1 Q. When did your involvement with National cease?

2 A. I guess when -- when National agreed to go out
3 of business as a result of the lawsuit with NETCO. It
4 was never resurrected at that point, after that point.

5 Q. Do you recall when that was?

6 A. I believe it was in -- it was in the year
7 2000, late in the year 2000, early in 2001.

8 Q. Late 2000 to early 2001?

9 A. That's my off the top of my head guess, yes.

10 Q. Did you get your money back at that point?

11 A. No.

12 Q. None of it?

13 A. None of it.

14 Q. Did it go bankrupt? Did it dissolve? What
15 can you tell me about the end of the days at National?

16 A. I -- I don't know. James Erwin took care of
17 that. He was an attorney, and he took care of whatever
18 the end of National was.

19 Q. Did you have to pay any additional amounts?

20 A. At the point that it terminated?

21 Q. Yes.

22 A. No.

23 Q. So you lost 20 grand plus the 20,000 of
24 software or whatever you put in it; would that be
25 accurate?

Deposition of Al Beamer

[Sheet 39, Page 153]

1 A. Yes.

2 Q. Did you ever receive any financial payments of

3 any sort from National?

4 A. I believe I got reimbursed for some computers

5 that I bought once. That's it.

6 Q. Do you recall how much that was for?

7 A. About \$3,000.

8 Q. Okay. The 20,000 that we talked about, that

9 wasn't just for software, that was for equipment and

10 such or not?

11 A. No.

12 Q. It wasn't?

13 A. Which 20,000?

14 Q. My fault. You contributed \$20,000 cash and

15 \$20,000 of software, is that it? That didn't include

16 equipment or anything like that?

17 A. No.

18 Q. Okay. So this equipment would be additional

19 equipment that you bought that you were reimbursed for?

20 A. Yes.

21 Q. So you never received any profits whatsoever

22 from National?

23 A. No.

24 Q. Did anyone, do you know?

25 A. Not that I know of.

[Page 154]

1 Q. Were you set up to receive any such profits as

2 far as your agreement with National?

3 A. Only insofar as you can see on this document

4 that I -- I owned shares.

5 Q. Okay. So that's -- you weren't supposed to

6 receive X amount of any profits over X amount?

7 A. No.

8 Q. It wasn't set up that way?

9 A. No.

10 MR. SHOEMAKER: Let's take just a quick

11 five-minute break.

12 (A short break was taken.)

13 Q. (By Mr. Shoemaker) All right. Your

14 employment agreement which is Defendant's Exhibit C, do

15 you agree that this was an enforceable contract?

16 MR. HABER: Objection; calls for a legal

17 conclusion.

18 You can answer to the extent that you know.

19 A. I -- I don't know. It was an agreement that

20 was -- that was made, but I -- I don't know what a court

21 would say about this agreement.

22 Q. (By Mr. Shoemaker) Are you aware that the

23 Ohio court found that Antonia Rivera's contract was

24 enforceable in the state of Ohio?

25 A. I am aware that the Ohio court -- I don't know

[Page 155]

1 exactly -- I don't remember exactly what the terms of

2 the -- the judgment and everything were in that case,

3 but I -- I know that the Ohio court did find that Rivera

4 was in violation of his responsibilities to NETCO, I

5 guess.

6 Q. Which is what you were attempting to avoid

7 when you formed National, is that correct?

8 A. Well, that wasn't the principal interest in

9 establishing National. It wasn't to avoid NETCO, but

10 that -- that was one of the things that I sought to

11 avoid, certainly, yes.

12 Q. Earlier you differentiated between what your

13 belief was versus what the court determined regarding

14 the violation of Rivera's non-compete, so let me ask

15 you. In your opinion, was Rivera's employment agreement

16 violated?

17 MR. HABER: Objection to the form of the

18 question as to what he differentiated, but you may

19 answer if you're able.

20 A. I -- could you restate the question?

21 Q. (By Mr. Shoemaker) Yeah. I'll actually

22 restate it.

23 MR. HABER: Do you want her to read it back?

24 MR. SHOEMAKER: No. That's fine. I'll

25 restate it in its entirety. That's fine.

[Page 156]

1 Q. (By Mr. Shoemaker) Do you think Mr. Rivera

2 violated his employment agreement with NETCO?

3 A. No, I don't.

4 Q. And why not?

5 A. Because I don't believe that National sought

6 business or did business with substantial NETCO

7 customers.

8 Q. You don't think Miss Sagrati contacted any of

9 NETCO's substantial customers?

10 A. No, I don't.

11 Q. Okay. What do you mean by substantial,

12 Mr. Beamer?

13 A. I mean customers more than somebody that had

14 done one deal or two deals in a year with NETCO.

15 Q. Let me clarify that. You don't think National

16 or any member of National contacted any of NETCO's

17 clients that NETCO did business with more than once or

18 twice a year? Is that what you just stated?

19 A. I -- I did state that I don't believe National

20 contacted and then obtained business from any customers

21 that were substantial network -- NETCO customers that

22 did a substantial -- that did half of their business or

23 more or did any substantial amount of their business

24 with NETCO on a regular basis.

25 Q. And when you say substantial, did you just say

Deposition of Al Beamer

[Sheet 41, Page 161]

1 not make sense why it is so broad in an employment
2 agreement so there's no risk of that whatsoever for a
3 six-month period?

4 MR. HABER: Objection to the form.

5 A. I don't agree.

6 Q. (By Mr. Shoemaker) Do you think paragraph 6
7 of this employment agreement is overly broad in its
8 language?

9 A. I --

10 MR. HABER: Objection, but you may answer.

11 A. I believe it's subject to interpretation as to
12 the real world.

13 Q. (By Mr. Shoemaker) When you met with Sagrati
14 and Rivera concerning NETCO customers, did you tell them
15 not to worry about the small customers, only the
16 substantial customers?

17 A. First of all, I don't believe we established
18 that I met with them. I said I talked with them. It
19 may have been over the phone.

20 Q. That's fine. During that conference, then,
21 same question.

22 A. The issue of substantial customers did not
23 come up until in the course of the lawsuit NETCO refused
24 to -- first claimed that Rivera was in violation by
25 dealing with NETCO customers and then refused to provide

[Page 163]

1 Q. -- with NETCO?

2 MR. HABER: Okay. I'm sorry. Can you repeat
3 or read back the question so I can --

4 MR. SHOEMAKER: I think the question was if
5 he aided or assisted Mr. Rivera in the formation of
6 National within six months after his employment with
7 NETCO.

8 MR. HABER: Within six months of Rivera's --
9 of Beamer's --

10 MR. SHOEMAKER: Beamer's.

11 MR. HABER: Thank you. I'm sorry. I had a
12 brain lock.

13 MR. SHOEMAKER: That's all right.

14 A. I said no.

15 Q. (By Mr. Shoemaker) And your employment with
16 NETCO ended early in April, is that correct?

17 A. Yes.

18 Q. So through the early part of October you
19 didn't aid or assist Mr. Rivera in any way, shape, or
20 form in the formation of National?

21 A. I don't believe so, no.

22 Q. Did you obtain confidential information as set
23 forth in paragraph 3 of NETCO during your employment
24 with NETCO?

25 A. I'm sorry. Could you --

[Page 162]

1 a list of who those customers were that they were
2 supposed to avoid doing business with.

3 Q. So initially Miss Sagrati was supposed to tell
4 Mr. Rivera about any customer she was to contact
5 regardless, correct, so Mr. Rivera could determine
6 whether or not it was in violation of the agreement, is
7 that accurate?

8 A. That's my understanding, yes.

9 Q. How long had Mr. Rivera run the Ohio operation
10 for NETCO?

11 A. Around two years.

12 Q. In paragraph 6 of Defendant's Exhibit C of
13 your employment agreement, it states subsection D,
14 employee shall not hire, solicit, induce, or attempt to
15 induce any employee or independent contractor of NETCO
16 to leave its employer engagement, engage in any
17 competing business, or to otherwise aid or assist any
18 person or company that is or intends to be in
19 competition with NETCO. Do you understand that
20 provision, Mr. Beamer?

21 A. Yes.

22 Q. Did you aid or assist Mr. Rivera in the
23 formation of National during the six months after your
24 termination --

25 A. No.

[Page 164]

1 Q. Did you obtain any of this confidential
2 information as referenced in paragraph 3 during your
3 employment with NETCO?

4 A. I did have access to information that would --
5 that would fit within some of these categories.

6 Q. Well, not just access to. Didn't you discuss
7 in meetings with Mr. Baumgart such things as actual
8 customers -- well, I'll just start with that, actual or
9 potential customers. Wasn't that discussed at some
10 meetings that you attended?

11 A. Not -- at most of the meetings there was no
12 mention of customers.

13 Q. I didn't ask you about most of the meetings.
14 I'm asking you if you discussed -- if at some meetings
15 were actual or potential customers of NETCO's discussed?

16 A. There were mentions of some customers at some
17 meetings.

18 Q. Were there products or services of NETCO's
19 discussed at meetings?

20 A. Products or services were discussed, but I
21 would not consider those to be non-public information or
22 not generally known to the public or trade. Title
23 insurance is a very generic industry.

24 Q. So the way NETCO does business is the same as
25 the way National was going to do business?

Deposition of Al Beamer

[Sheet 42, Page 165]

1 MR. HABER: Objection. You asked him about
2 products.

3 MR. SHOEMAKER: It's a different question.

4 MR. HABER: All right.

5 A. The way NETCO does business is the way every
6 title insurance agent does business.

7 Q. (By Mr. Shoemaker) So there's no secrets at
8 all is what you're saying?

9 A. I'm saying there certainly were none held by
10 NETCO.

11 Q. What about the client relationships? Are they
12 an extremely important part of any title insurance
13 agency?

14 A. It's important to have clients, certainly,
15 yes.

16 Q. Is that -- do you not consider that an
17 extremely important part of that business? Isn't that
18 what it's based on?

19 A. It's not non-public. It's -- it's dealing
20 with the public and dealing with the customers that are
21 out there. You try to -- to obtain their business,
22 certainly, but it's not anything secret that you do in
23 negotiating or obtaining business from a particular
24 customer.

25 Q. How about money spent on developing clientele,

[Page 167]

1 ever after.

2 Q. So if everybody does it the same, why are some
3 companies more successful than others?

4 A. Better salespeople provide product -- that
5 provide the services faster, they provide them -- their
6 relationships that get formed as to connections within
7 the industry with realtors and others. There are any
8 number of reasons why any business is more successful
9 than another in the same industry without it being a
10 trade secret.

11 Q. Okay. Well, certainly would you agree that
12 NETCO is a successful company?

13 A. They've made a lot of money.

14 Q. Okay.

15 A. I wouldn't consider them a successful company.

16 Q. Why not?

17 A. I don't like the way that John Baumgart does
18 business.

19 Q. If you based success purely on how much money
20 a business makes, would you consider NETCO a successful
21 company?

22 A. Yes.

23 Q. And is that based, I can only guess, on what
24 you just described, on things that make title insurance
25 agents or agencies successful? Are some of those things

[Page 166]

1 those types of things? Is that public information?

2 A. There was very little money spent on
3 developing clientele as far as I know at NETCO.

4 Q. Okay. Would you consider that public
5 information, though?

6 A. I don't know how much NETCO spent on -- on
7 sales or developing clients.

8 MR. HABER: The question was would you
9 consider the money spent to be public information.

10 A. The -- the private financial matters of -- of
11 NETCO as to what it spent money on would be NETCO's
12 private financial information. I would agree with that.

13 Q. (By Mr. Shoemaker) How about how NETCO wanted
14 to market NETCO in the Ohio area or in any other state,
15 for that matter? Would that be something that would be
16 considered a trade secret, in your mind?

17 A. Absolutely not.

18 Q. Okay. Why not?

19 A. Because they did it the same way that
20 everybody else in the title insurance industry does.
21 You hire a salesman and you send the salesman out there,
22 and you tell them that we'll provide good pricing, we'll
23 provide good service, and then you hope that they try
24 you and that they -- they like your people and that they
25 like your pricing and that everybody goes on happily

[Page 168]

1 utilized by NETCO to make them successful?

2 A. It's such a vague question. NETCO hires
3 salespeople. They go out and meet customers. They try
4 to solicit business from those customers, and they have
5 been successful in getting those customers to send them
6 orders, and they have been able to keep their costs low
7 enough so that there have been profits. That's --
8 that's the way that any grocery store or any -- any
9 business or -- that's the way that many businesses make
10 money. It's not a trade secret.

11 Q. Okay. Did you use any of the knowledge you
12 obtained while you were at NETCO when you were creating
13 the software package for National?

14 A. I did my best to avoid using any NETCO
15 experience, and I certainly avoided using their forms
16 and all of the databases that I -- that had been in
17 place at NETCO.

18 Q. You said you did your best, but my question
19 was did you use any of your knowledge that you obtained
20 at NETCO in creating your software for National?

21 A. Creating the software, no.

22 Q. Okay. How about did you use any of the
23 knowledge that you obtained at NETCO when implementing
24 any of the forms that you used at National?

25 A. No.

Deposition of Al Beamer

[Sheet 44, Page 173]

1 happened one day to the next.
 2 Q. Didn't your meeting --
 3 A. Tony Rivera wasn't employed at the time, so
 4 his main focus was figuring out what he was going to do
 5 next and making it happen.
 6 Q. Well, are you sure that meeting with Erwin
 7 took place in October?
 8 A. I don't know. I don't have anything on paper
 9 telling me when that meeting took place.
 10 Q. So it could have taken place in September, as
 11 far as you know?
 12 A. I don't believe it took place in September,
 13 but to -- I -- I don't have written confirmation of
 14 exactly when it took place.
 15 Q. So you don't believe it occurred in September,
 16 you think it occurred in October, and on top of that,
 17 after the general discussions with Erwin in early
 18 October, everything got done by the 21st of October.
 19 That's your understanding or that's your recollection?
 20 A. I don't know that everything got done.
 21 Q. Well, everything contained in the agreement.
 22 A. There was a -- there was an agreement proposed
 23 dated October 21st.
 24 Q. And the doors opened November 1st, right?
 25 A. Yes.

[Page 174]

1 Q. Okay. Are you aware of the interrogatory
 2 responses that your attorney, Mr. Haber, or at least
 3 someone from his office submitted to me? Did you review
 4 them, I should say?
 5 MR. HABER: The ones e-mailed today or the
 6 prior ones?
 7 MR. SHOEMAKER: Anything prior to today.
 8 A. I believe so.
 9 Q. (By Mr. Shoemaker) Did you sign a
 10 verification that they were true and accurate?
 11 A. I don't remember.
 12 MR. HABER: Did he?
 13 MR. SHOEMAKER: He should have if he didn't.
 14 MR. HABER: Yeah. If he didn't -- they came
 15 from John, so --
 16 A. I have no reason to expect that -- that I am
 17 not aware of the answers to the interrogatories.
 18 Q. (By Mr. Shoemaker) Well, I want to clarify
 19 today that the information contained in the
 20 interrogatories is true and accurate, to the best of
 21 your knowledge. You're required to sign them. I want
 22 to know if you did -- if you looked through and verified
 23 them.
 24 MR. HABER: I don't know if I have a verified
 25 copy of them. Do you?

[Page 175]

1 MR. SHOEMAKER: I may upstairs.
 2 MR. HABER: Since John did it, I mean, I
 3 don't know.
 4 MR. SHOEMAKER: Well, regardless of who did
 5 it, Mr. Beamer is required to verify that they're
 6 accurate, so if he hasn't --
 7 MR. HABER: Then he should.
 8 MR. SHOEMAKER: -- then I'd like him to do it
 9 right now on the record.
 10 MR. HABER: There was some supplemental stuff
 11 which I e-mailed which he has not formally reviewed,
 12 although I worked with him last night.
 13 MR. SHOEMAKER: If that's the case, if you
 14 want tonight as well, that's fine, but I would like for
 15 those to be verified as well.
 16 MR. HABER: Can you just print those for me
 17 because I don't have a printer.
 18 MR. SHOEMAKER: Yeah. I can, actually.
 19 MR. HABER: I did them on the computer and
 20 e-mailed them, so if you will print them for me, I'll
 21 have him verify them. Do you want us to just do it
 22 tonight so we don't waste deposition time?
 23 MR. SHOEMAKER: No. Actually, as far as
 24 those go, I want him to do it right now if he hasn't
 25 previously because frankly, he should have if he

[Page 176]

1 hasn't.
 2 MR. HABER: I agree.
 3 MR. SHOEMAKER: So I would assume that's
 4 something that he has reviewed, and if he hasn't, then
 5 yeah. Frankly, I would like to know that on the record
 6 if he hasn't reviewed them and you submitted them. As
 7 far as what you sent me last night, that's fine to do
 8 tonight.
 9 MR. HABER: There was a supplemental response
 10 after that.
 11 A. I do remember reviewing these. They are my
 12 responses.
 13 Q. (By Mr. Shoemaker) Okay. And --
 14 MR. HABER: I will formally, if you don't
 15 have a verified copy, get a verification form so that
 16 you can -- signed by him so it can be attached.
 17 MR. SHOEMAKER: Frankly, I wasn't trying to
 18 be clever. I will see if I do. I don't know if I did.
 19 If I didn't, I want to make sure that you verify at
 20 least on the record that they're true and accurate, and
 21 that's what you're telling me, correct?
 22 MR. HABER: No one is going to accuse you of
 23 being clever.
 24 MR. SHOEMAKER: Thanks.
 25 Q. (By Mr. Shoemaker) Is that correct,

Deposition of Al Beamer

[Sheet 45, Page 177]

1 Mr. Beamer, these responses are true and accurate?

2 A. Yes.

3 Q. To the best of your knowledge, correct?

4 A. Correct.

5 MR. HABER: Just so we're -- since there was
6 a supplementation that was done in April of '03, why
7 don't you take a look at those to make sure to the
8 extent they've been supplemented. I know it looks -- I
9 think John supplemented them by letter form as well to
10 you. Do you have a copy of that? Do you want me to
11 have -- I want to make sure you have them all verified.

12 MR. SHOEMAKER: If you have a letter, you may
13 supplement that tomorrow. What we're talking about on
14 the record is your first responses, I believe, that
15 Mr. Beamer just reviewed, correct?

16 MR. HABER: Correct. He reviewed the first
17 responses. There was a supplemental sent in April of
18 '03.

19 MR. SHOEMAKER: And he reviewed that as well
20 as we sat here, correct?

21 MR. HABER: He's just reviewed that now, but
22 then separate and apart there was an April 9th, 2003
23 letter sent via e-mail to you from John supplementing
24 the damage calculations. It appears that Mr. Beamer
25 would have gotten a copy of this letter. If you wish,

[Page 179]

1 correct?

2 A. Yes.

3 Q. What is that based on?

4 A. It's based on several things.

5 Q. Can you tell me?

6 A. It started with a -- with several
7 conversations with Bill Baumgart in Florida in which he
8 told me that his brother had been pressuring him to
9 terminate me as a result of my involvement with
10 National. It continued with Bill Andrews taking me
11 aside into a separate room in the -- during my
12 deposition in Cincinnati and telling me that if National
13 was not disbanded immediately that John would arrange
14 through his brother to see that I was -- that my
15 involvement with TTC was terminated. It continued with
16 Bill Andrews then calling me a few days later on
17 December 6th, '99 to tell me that, in fact, the deal had
18 been struck and that I was, in fact, terminated from
19 Transcontinental at that point and instructed me to
20 contact Attorney Curphey to confirm that, and it then
21 continued with me calling Attorney Curphey and having
22 him tell me yes, I was terminated from Transcontinental,
23 yes, he had been in touch with Mr. Andrews and that
24 the -- I had asked to talk to Mr. Baumgart, and he said
25 that I could not, and Mr. Curphey then sent proposed

[Page 178]

1 I will put these in formal interrogatory form.

2 MR. SHOEMAKER: I don't have a problem with
3 that, with the way they're formatted.

4 MR. HABER: It's done in a letter. If you
5 want it in the format of an interrogatory, I'll do so
6 for you.

7 MR. SHOEMAKER: I do not need that because
8 we're going to discuss that today anyway, so I think
9 it's fine the way it is.

10 MR. HABER: Okay.

11 MR. SHOEMAKER: If he has a problem with
12 what's in there, he can let me know today. That's
13 something I plan on covering.

14 MR. HABER: Okay.

15 Q. (By Mr. Shoemaker) Okay. So you've reviewed
16 the responses to the interrogatories that are dated I
17 believe in March of 2003 and then plaintiff's
18 supplemental responses that are dated April 18th, and
19 you swear to the best of your knowledge that the
20 responses to that are true and accurate, is that
21 correct?

22 A. Yes.

23 Q. Okay. You've alleged in your complaint that
24 John Baumgart pressured his brother to terminate you in
25 retaliation for your investment in National, is that

[Page 180]

1 agreements by which I would agree to the termination of
2 my employment and the termination of my contracts as
3 Title Marketing Company with TTC.

4 Q. Anything else?

5 A. What was the question at the beginning of all
6 that?

7 Q. What was your allegation that John pressured
8 his brother to terminate you from TTC for your
9 investment in National? What was it based on?

10 A. It was also based on conversations that I had
11 with Transcontinental Title employees who told me that
12 there was a deal in place that John Baumgart would
13 reimburse Bill Baumgart for any costs that he may incur
14 as a part of terminating my employment.

15 Q. And who specifically told you that?

16 A. Frank Skryd.

17 Q. When did Frank tell you that information?

18 A. In early 2000.

19 Q. Where were you when he told you this?

20 A. I believe it was a phone conversation.

21 Q. Who initiated the phone call?

22 A. I did.

23 Q. For what purpose?

24 A. To -- because Frank and I were friends, to see
25 how he was doing, and to -- and to see what he was

Deposition of Al Beamer

[Sheet 46, Page 181]

1 doing, if he was still with Transcontinental and to --
 2 and to see if they were still using my software, and
 3 that issue came up.
 4 Q. Did you bring it up, or did Frank bring it up?
 5 A. I don't recall.
 6 Q. Do you recall specifically what Frank told you
 7 in regards to that fact?
 8 A. Yes, I do.
 9 Q. And what was the statement?
 10 A. He said that Ian Gorman was in the same room
 11 with Bill when Bill was on the phone with John Baumgart
 12 and made that deal. Ian had told him.
 13 Q. So let me be clear here. Frank told you that
 14 Ian Gorman told him that he was present during a phone
 15 conversation between Bill Baumgart and John Baumgart
 16 where this deal was made?
 17 A. Yes.
 18 Q. Frank was not in the room during the
 19 conversation between Bill and John, correct?
 20 A. He didn't say that he was.
 21 Q. All right. Did he state whether Mr. Gorman
 22 was involved in a -- in like a speaker phone
 23 conversation? Did he actually hear John say this, or
 24 was he just present when Bill and John were talking?
 25 A. I don't remember.

[Page 182]

1 Q. Well, what was your understanding?
 2 A. He -- Ian -- Frank said that Ian was well
 3 aware that the -- the conversation had taken place and
 4 what the conversation was about and that the offer was
 5 made and eventually accepted for the -- the agreement to
 6 terminate me and for there to be an agreement to
 7 reimburse Bill by John.
 8 Q. Do you have any knowledge of whether John ever
 9 reimbursed Bill for any amounts regarding that matter?
 10 A. My understanding is that he didn't.
 11 Q. He did not?
 12 A. That's my understanding.
 13 Q. And where did you obtain that information?
 14 A. From either Frank Skryd or Ian Gorman.
 15 Q. So you have spoken with Mr. Skryd or
 16 Mr. Gorman since your initial settlement with TTC for
 17 80,000?
 18 A. Yes.
 19 Q. ~ And that's when that conversation would have
 20 taken place?
 21 A. I've talked with them several times, so during
 22 one of those conversations it took place.
 23 Q. And they told you that to their knowledge,
 24 John had never paid Bill anything?
 25 A. Yes.

[Page 183]

1 Q. Okay. Let's go back. You mentioned you had
 2 several conversations with Bill Baumgart that John
 3 Baumgart was pressuring him to terminate you, is that
 4 right?
 5 A. Yes.
 6 Q. When did the first one of these conversations
 7 take place?
 8 A. I would estimate about six weeks prior to the
 9 time I was terminated.
 10 Q. Well, your employment ended with TTC in early
 11 December, right?
 12 A. Maybe four weeks. About the time, I guess, we
 13 first started talking about it as to John wanting me
 14 terminated, about the time that National opened up.
 15 Q. Which was November 1st of '99?
 16 A. So roughly November 1st.
 17 Q. Okay. What do you specifically recall Bill
 18 Baumgart telling you at that time?
 19 A. I recall him saying that -- that John had
 20 called him and was upset that this company was going to
 21 be competing against him and that he wanted Bill to
 22 terminate me to hurt the chances of National Real
 23 Estate.
 24 Q. Where did this conversation take place?
 25 A. Either in the Transcontinental office or at

[Page 184]

1 dinner.
 2 Q. When is the next conversation you had with
 3 Bill where the topic came up? When did that occur?
 4 A. A week or so later. The next time I was down
 5 in Florida.
 6 Q. And what was said at that meeting?
 7 A. That John had again contacted Bill asking him
 8 to -- to fire me.
 9 Q. How about the next meeting regarding the
 10 topic? Was there any further meetings between you and
 11 Bill where it was discussed?
 12 A. Yes.
 13 Q. And when was that?
 14 A. I don't know if there was one or two more, but
 15 it was roughly the same -- the gist was the same for
 16 each until the -- the last one which was I believe the
 17 day before my deposition in Cincinnati.
 18 Q. Okay. Well, before -- your deposition in
 19 Cincinnati was what, December 2nd of '99? Does that
 20 sound right?
 21 A. Right. I believe so.
 22 Q. So you think December 1st of '99 you had a
 23 meeting with Bill, right?
 24 A. Within a day or two before that, yes, sir.
 25 Q. Okay. And between the last time we just

Deposition of Al Beamer

[Sheet 47, Page 185]

1 discussed and your meeting in early December, you think
2 there were one or two other meetings?

3 A. Yes. Generally whenever Bill and I talked
4 during that period, it included a statement by him that
5 John had called or John had come down or John had done
6 something and -- and tried to get him to agree to fire
7 me as a part of it. We talked about other things,
8 certainly, but that was one of the things that he
9 continued to mention, and it was very aggravating to
10 him.

11 Q. It was aggravating to him that John was asking
12 him that?

13 A. Yes.

14 Q. Overall, how would you describe the
15 relationship between John and Bill?

16 A. Brothers.

17 Q. Are they friends, do you think?

18 A. They -- sure.

19 Q. Do they get along well?

20 A. At times as I'm sure with any set of brothers
21 that they get along better than other times.

22 Q. Would you describe their relationship as being
23 fairly normal as far as relationships between brothers?

24 A. They're quite competitive with each other, but
25 they often act like normal brothers.

[Page 187]

1 A. He said that his brother and Ed Cook had come
2 down to Florida and one of their main purposes was to
3 convince him to terminate my employment and that he had
4 told his brother and now he was telling me -- he was
5 quite angry and upset -- that I was an employee of
6 Transcontinental Title, I was going to continue to be an
7 employee of Transcontinental Title, I had been an
8 important part of the success of Transcontinental Title,
9 and that he did not want to hear any more about National
10 Real Estate or anything to do with the state of Ohio
11 from me or his brother forever and ever. He wanted to
12 put this to bed forever and say look, Al Beamer works
13 for me and he's going to continue to work for me, and I
14 don't want to hear about it.

15 Q. That's what he told you he told his brother?

16 A. That's what he told me, and that's what he
17 told me that he told his brother.

18 Q. Any of these conversations that we've just
19 discussed between you and John Baumgart, were there any
20 witnesses to any of those conversations?

21 A. I believe you misspoke. You said the
22 conversation was with --

23 Q. Thank you. Any of the conversations that
24 we've just discussed regarding your conversations with
25 Bill Baumgart, were there any witnesses to any of those?

[Page 186]

1 Q. But the competition between them obviously is
2 different than most brothers, correct?

3 A. Well, it wasn't so much at that time. They
4 had divided up the country, and they kept out of each
5 other's markets, so they -- they were not competing head
6 to head. They were just both wanting to -- to have the
7 biggest, most financially successful company, so that --
8 that would be like two brothers wanting to run the
9 fastest race or have the biggest car or something like
10 that.

11 Q. Okay.

12 A. They were not competitive directly with each
13 other at that point.

14 Q. Did you consider yourself to be a part of the
15 success at TTC in December of '99?

16 A. Yes.

17 Q. And you think Bill considered you to be a part
18 of the success of TTC in December of '99?

19 A. I know he did. He said that.

20 Q. Yet you think he threw all that away and the
21 help to his company that you provided him because John
22 asked him to?

23 A. Yes. I know that happened.

24 Q. So on 12/1 when you spoke with Bill, what
25 specifically did he say about it?

[Page 188]

1 A. The ones at the bar or at the -- at dinner
2 were -- there were not witnesses. The ones in the
3 office, there may have been one or two witnesses.

4 Q. I'm not asking may have. I'm asking you if
5 you remember if there were any witnesses to any
6 conversation between you and Bill regarding this topic.

7 A. I -- I don't recall specifically that there
8 were witnesses to any particular conversations.

9 Q. So what changed, Mr. Beamer? What changed
10 between 12/1 and 12/6?

11 A. I was terminated.

12 Q. Even though Bill had just told you on 12/1
13 that he didn't want to hear any more about it and so
14 forth, correct?

15 A. Yes.

16 Q. Was there any change of anything, to your
17 knowledge, between the 1st of December and the 6th or
18 7th of December?

19 A. A change in what?

20 Q. In your involvement with National or anything
21 that you had done with TTC; anything, to your knowledge.

22 A. What happened between those times was the --
23 the time that I was threatened with termination by Bill
24 Andrews.

25 Q. Okay.

Deposition of Al Beamer

[Sheet 48, Page 189]

1 A. And he said that he had -- he was talking to
2 me on behalf of John Baumgart and NETCO, that John had
3 asked him to tell me that unless I saw to it that
4 National was immediately torn apart and disbanded and --
5 and sought no further business that he was working out a
6 deal to where I would be terminated from
7 Transcontinental.

8 Q. Okay. Did he specifically state to you that
9 NETCO would, quote, exploit the family relationship
10 between NETCO and TTC?

11 A. I don't know that he used those words.

12 Q. What did he state that was similar to that?
13 What do you recall? What words did he use?

14 A. His words were generally just as I've said,
15 that unless I saw to it that National was disbanded and
16 sought no further business that he was directed by John
17 Baumgart to tell me that I could count on being
18 terminated by Transcontinental.

19 Q. Where did that take place?

20 A. In David Skidmore's offices in Cincinnati.

21 Q. Were there any witnesses to your conversation
22 with Mr. Andrews?

23 A. No. He specifically asked that -- that we be
24 left alone and that I not bring in Mr. Fitch who was
25 with me that day.

[Page 191]

1 A. No. It was more than two sentences.

2 Q. Well, then --

3 A. Because I didn't -- I didn't think that it was
4 possible, and I certainly didn't think that it was
5 right, and I -- I had known Bill Andrews for a couple
6 years at that point, and I had tried to say that he
7 needed to talk to John Baumgart to convince him that
8 this was not the way to go, that it was certainly
9 illegal and unethical and wrong, and that he should not
10 be trying to get me fired from a job and a contract that
11 he had no participation in, and so I had -- I tried to
12 convince Mr. Andrews of that, that NETCO shouldn't do
13 it, John Baumgart shouldn't do it, and Bill Andrews
14 shouldn't be the mouth piece for it.

15 Q. And he specifically told you he was acting on
16 behalf of John?

17 A. He specifically told me that, yes.

18 Q. And so you responded with all of this stuff
19 that you just stated all prior to informing your counsel
20 of any of that stuff, correct?

21 A. Yes.

22 Q. Anything else that was said by Mr. Andrews in
23 response to your response, I guess, that he shouldn't do
24 it?

25 A. You know, it's just John. It's just John

[Page 190]

1 Q. Did you tell Mr. Fitch about the conversation
2 directly afterwards --

3 A. Absolutely.

4 Q. -- before the deposition started back up?

5 A. Yes.

6 Q. What did Mr. Fitch say at that point?

7 A. I told him what I had heard from Bill Andrews,
8 and I also told him that I didn't believe it could be
9 true because I had just heard from Bill Baumgart within
10 the past 24 or 48 hours that, in fact, that was not
11 going to happen.

12 Q. So is this -- the fact that he would exploit
13 your family -- I should say the family relationship and
14 arrange for your termination if you did not disband your
15 participation in National, did all that occur in the
16 same -- at the same time?

17 A. It was a part of the same threat, yes.

18 Q. The same conversation?

19 A. Yes.

20 Q. Correct?

21 A. Yes.

22 Q. Was there anything else said at that time by
23 Mr. Andrews, or was that it?

24 A. I think that was enough. That was about it.

25 Q. I mean, that's two sentences, correct?

[Page 192]

1 being John. You just have to stand out of the way, you
2 know, he's going to do this kind of stuff, and you have
3 to expect him to do this kind of stuff.

4 Q. And that was it?

5 A. I argued further, but I -- I apparently made
6 no headway.

7 Q. When was the next time you talked to Bill
8 Andrews in any way, shape, or form?

9 A. We went from that room out to the deposition.

10 Q. Okay. After the deposition did you speak with
11 Mr. Andrews?

12 A. Not one on one. If I spoke to him, it would
13 have just been a matter of scheduling what was happening
14 next or things like that.

15 Q. When was the next time you talked to
16 Mr. Andrews that had anything to do with your -- the end
17 of your employment with TTC?

18 A. On December 6th.

19 Q. And he called you?

20 A. Mr. Andrews called me at my home.

21 Q. And specifically told you what?

22 A. That I had been terminated by Transcontinental
23 and as he had threatened, that I was going to be and
24 that if I wanted to confirm that, I could call Attorney
25 Bill Curphey.

Deposition of Al Beamer

[Sheet 49, Page 193]

1 Q. Was that all he said?

2 A. Again, I tried to convince him that doing this
3 was unethical and illegal and wrong, immoral, everything
4 else, and -- and he said again this is John being John,
5 and I -- I told you it was going to happen, and it
6 happened just like I told you it would.

7 Q. Was that the end of the conversation?

8 A. I don't know if we talked about anything else
9 or not. I believe I was pretty much in shock at that
10 point.

11 Q. And then -- I'm sorry.

12 A. I was in -- pretty much in shock at that point
13 that I had been terminated from my -- my main means of
14 livelihood.

15 Q. And then you contacted Mr. Curphey, correct?

16 A. Yes.

17 Q. What time of the day was it when Mr. Andrews
18 called you, do you remember?

19 A. I believe it was in the morning, but I don't
20 recall specifically.

21 Q. Did you call Mr. Curphey immediately after you
22 hung up with Mr. Andrews?

23 A. I believe so.

24 Q. Did you have his number handy or had you --

25 A. I believe Mr. Andrews gave it to me.

[Page 195]

1 December of '99, when is the next time you met with Bill
2 Baumgart or spoke with him in any way?

3 A. At his scheduled deposition in the first
4 lawsuit.

5 Q. And he never told you at any time prior to
6 December 1st or during that meeting on December 1st of
7 1999 that if you were competing with him in Ohio, he
8 would terminate you?

9 A. No, because I wasn't.

10 Q. And you're telling me that he didn't have any
11 business up in Cincinnati, any title insurance business
12 at that time in November of '99, correct?

13 A. Not that I know of.

14 Q. Well, you told me he specifically told you he
15 didn't, right?

16 A. I'll telling you that Transcontinental Title
17 did not.

18 Q. All right. What about Southeast Equity Title?

19 A. I'm saying that he had told me that he had
20 sold that company prior to that time, and I didn't know
21 if it does business in the Cincinnati market. I didn't
22 know that it did, and -- and that that had nothing to do
23 with any of my contracts or relationships with
24 Transcontinental ever.

25 Q. Okay. Did you receive a settlement agreement,

[Page 194]

1 Q. Did you contact Bill Baumgart?

2 A. I tried to.

3 Q. When?

4 A. That same day. When I spoke to Bill Curphey,
5 I asked if he would pass on a message to Bill Baumgart
6 that I would like to speak to him, and he said that he
7 would convey that to Bill Baumgart, and then a day or
8 two later when I talked to Bill Curphey again, he told
9 me that Bill Baumgart had refused to talk to me.

10 Q. Didn't you have a cell phone number for Bill
11 Baumgart?

12 A. No.

13 Q. You didn't?

14 A. No.

15 Q. Did he have a cell phone at that time, do you
16 know?

17 A. Probably. I -- I had a home phone number for
18 him, but I didn't have his cell phone number.

19 Q. Did you leave a message at his home?

20 A. Yes.

21 Q. What did the message say?

22 A. I can't believe this is -- this is happening,
23 please call me, I'd like to discuss this.

24 Q. When was the next time -- after your meeting
25 or dinner or whatever it was at the beginning of

[Page 196]

1 a proposed settlement agreement from Bill Curphey on
2 December 7th of 1999?

3 A. Yes.

4 Q. Did you ever sign that agreement?

5 A. No.

6 Q. Was that agreement solely between yourself,
7 TMC, and TTC?

8 A. That was the terms of that agreement, yes.

9 Q. Okay. Did you ever receive any other proposed
10 settlement agreements from anyone regarding your
11 employment with TTC?

12 A. Yes.

13 Q. And when was that?

14 A. As a part of the NETCO case, NETCO proposed a
15 settlement that included a clause that required me to
16 waive any claim against TTC.

17 Q. Do you have a copy of that document?

18 A. A copy of NETCO's proposed settlement
19 agreement?

20 Q. Uh-huh.

21 A. I suppose.

22 MR. HABER: Yes.

23 MR. SHOEMAKER: Is this something that you --

24 MR. HABER: I didn't know that it wasn't
25 produced with the other stuff that I produced.

Deposition of Al Beamer

[Sheet 50, Page 197]

1 MR. SHOEMAKER: Is this something you think
2 you produced I guess is what I'm asking.
3 MR. HABER: Yeah. If I haven't, I apologize,
4 but you may make a copy of it. It was with the stuff
5 when I produced the contracts and some of the stuff
6 from Florida, so I thought it had been produced.
7 THE WITNESS: I think it was.
8 MR. HABER: I thought it was.
9 MR. SHOEMAKER: Off the record.
10 (There was a discussion off the record.)
11 Q. (By Mr. Shoemaker) You've referenced that
12 there was a proposed settlement agreement. I'm not
13 going to mark it, but we -- we've reviewed it. You had
14 to release your rights to sue TTC as part of the
15 settlement in Rivera, is that accurate? It's probably
16 not stated real clearly, but is that the general idea?
17 It's in paragraph 24 of that document.
18 A. Yes.
19 Q. Who --
20 A. It's a condition on my covenant not to sue
21 TTC.
22 Q. Who provided you a copy of that document?
23 A. My attorney.
24 Q. Who is that?
25 A. Mark Fitch.

[Page 199]

1 A. I believe the next day or at most, two days
2 later. I guess it was the next day because he faxed me
3 those agreements.
4 Q. How about after that? Did you have any
5 further conversations with him? I'll continue my
6 question with prior to you filing a lawsuit against TTC.
7 A. I don't remember if I -- I don't remember
8 talking to him after that. I was trying to -- I was
9 trying to get to Bill Baumgart, to talk to Bill
10 Baumgart. I don't remember if I tried to call Bill
11 Curphey again to get through to Bill Baumgart or not,
12 but I -- but that would have been the only other
13 conversation.
14 Q. You don't recall any other statements
15 Mr. Curphey made to you regarding the end of your
16 employment with TTC, is that accurate?
17 A. Any other statements? You're saying did I
18 ever talk to him after?
19 Q. Right. And you're saying you don't really
20 remember, you may have, so my question is being more
21 specific. Do you recall sitting here today anything
22 else that Mr. Curphey stated to you regarding the end of
23 your employment with TTC?
24 A. There are things that he stated to me during
25 the December 6th and December 7th phone calls, yes.

[Page 198]

1 Q. Do you claim that you were not part of the
2 Rivera NETCO case?
3 MR. HABER: Objection. Define part.
4 MR. SHOEMAKER: Okay. I'll define it.
5 MR. HABER: Are you defining it as party?
6 Q. (By Mr. Shoemaker) You're not a party, is
7 that correct?
8 A. No. I cannot claim that I was not a party. I
9 was a party.
10 Q. Well, I think in your complaint it says
11 Curphey further stated that termination would be
12 finalized as part of a settlement in NETCO v. Rivera
13 despite the fact that neither TTC nor Beamer were
14 parties to the lawsuit. Are you stating you were or you
15 were not a party to this lawsuit?
16 A. I was a party to the lawsuit.
17 Q. So to the extent that the complaint states
18 that you were not a party to the lawsuit, the
19 complaint's incorrect, is that accurate?
20 A. I was a party to the NETCO/Rivera lawsuit.
21 Q. Did you have any further conversations with
22 Bill Curphey after you contacted him on December 6th
23 regarding the end of your employment with TTC?
24 A. Yes.
25 Q. When were -- when did that occur?

[Page 200]

1 What I'm saying is I don't recall when I talked to him
2 after December 7th.
3 Q. Okay. On December 6th you asked him if it was
4 true that you were terminated, is that right?
5 A. Yes.
6 Q. And he said yes, it is, you're gone?
7 A. Yes.
8 Q. Did he state why you were being terminated?
9 A. He said you know why, and I said that I had
10 just talked to Bill Andrews, and Bill Andrews had told
11 me to call him and that I -- I couldn't believe that
12 Bill Baumgart had given in to pressure from John to fire
13 me, and he said that was outside of his knowledge as to
14 why that had happened, but he was certain that I had
15 been terminated and that the -- I guess I did talk to
16 him after he sent me those agreements because he needed
17 to have some information to fill in pieces of the
18 agreement. I don't believe that he knew the name of
19 Title Marketing Company and a few other pieces of the
20 agreement, so he -- he wanted me to fill in just little
21 informational pieces of that, of those agreements. So I
22 did talk to him at least one more time after the 7th
23 when I gave him that information, and -- and in all of
24 those times I tried to convince him as I had Bill
25 Andrews that this whole thing was a mistake to terminate

Deposition of Al Beamer

[Sheet 51, Page 201]

1 me because of -- of John Baumgart's claims and John
2 Baumgart's influence.

3 Q. Okay. Did he make any other statements to you
4 about it that next time you talked to him after December
5 6th or 7th that you just referenced?

6 A. He said that this -- the whole thing needed to
7 be resolved in relation to the Cincinnati case. I had
8 asked about timing and things like that, and he said
9 that he wasn't sure about that, that I should contact
10 Bill Andrews about how the sequence of events needed to
11 be done as to getting that done and any kind of
12 settlement with -- with NETCO and piecing it all
13 together.

14 Q. So did you contact Andrews, then?

15 A. Yes.

16 Q. When did you contact him?

17 A. I believe I called -- tried to reach him soon
18 after my conversation with -- with Curphey on the 6th,
19 and again had the same conversation that they shouldn't
20 do this but that they were doing it.

21 Q. Let me interrupt you just to be clear on
22 something. You state that Andrews called you on the 6th
23 and told you you were terminated. Then you called
24 Curphey, and we're talking about a later conversation
25 with Curphey. You said that was a couple of days after

[Page 203]

1 the 6th, is that correct?

2 A. Yes.

3 Q. And that was a couple of days after where he
4 told you to contact Mr. Andrews about --

5 A. On the 6th he told me to contact

6 Mr. Andrews --

7 Q. Okay.

8 A. -- and that he had been in touch with
9 Mr. Andrews.

10 Q. All right. So on the 8th do you recall any
11 additional statements Mr. Curphey made, and I say the
12 8th; a couple of days after the 6th?

13 A. I spoke to him on the 6th and then on the 7th
14 and then a couple days after the 7th, so --

15 Q. Okay. A couple of days after the 7th when you
16 talked to him, did he make any other statements to you
17 regarding the end of your employment with TTC as to why
18 or what his knowledge was?

19 A. No. He just said it was up to Bill Baumgart;
20 he was following orders.

21 Q. Curphey was following orders from Bill
22 Baumgart; that's what you're referring to, correct?

23 A. Yes.

24 Q. So Curphey never told you that you were being
25 terminated because John Baumgart pressured Bill

[Page 202]

1 the 6th, is that correct?

2 A. I -- in the conversation with Curphey on the
3 6th and then on the 7th, I had again tried to convince
4 him to try and convince Bill Baumgart that this was not
5 the way to go.

6 Q. Okay. And then you talked to Bill Andrews
7 after that second conversation with Curphey, is that
8 correct?

9 A. No. It was after -- it was on the same day of
10 the first conversation with -- with Curphey.

11 Q. So you talked to Bill Andrews twice on
12 December 6th?

13 A. I believe so.

14 Q. I'm asking you what you remember today,
15 Mr. Beamer. That's all -- that's all I want you to
16 answer.

17 A. That's all I can remember. To the best of my
18 recollection, I called him back and again tried to plead
19 my case..

20 Q. On the 6th?

21 A. Yes.

22 Q. Did you talk with Mr. Andrews any more after
23 December 6th regarding this matter?

24 A. I don't believe so.

25 Q. But you did talk to Mr. Curphey again after

[Page 204]

1 Baumgart, correct?

2 A. He never specifically said those words, no.
3 He told me that he had been contacted by Bill Andrews.

4 Q. So? What did that mean to you?

5 A. That told me that they were all in on the same
6 deal which involved my termination.

7 Q. Did he tell you that Bill had told him this or
8 that -- I'm sorry -- Bill Baumgart or Bill Andrews that
9 you were being terminated?

10 A. Bill Baumgart told him that I was being --
11 that I was being terminated.

12 Q. Okay. So when he was contacted by Bill
13 Andrews, what relevance does that have? What did he
14 tell you that that was for?

15 A. He knew that it was -- that it was all related
16 to the Cincinnati case.

17 Q. Did he specifically tell that -- say that to
18 you?

19 A. Yes.

20 Q. Did he state specifics of what it was related
21 to in Cincinnati?

22 A. No.

23 Q. Did he state to you that they were all in on
24 the same deal? Was that a statement he made?

25 A. No.

Deposition of Al Beamer

[Sheet 52, Page 205]

1 Q. Okay. That's just your summary of what he was
2 saying?

3 A. My inference.

4 Q. Of what he said?

5 A. Yes.

6 Q. Any other statements by Bill Curphey that made
7 you think that?

8 A. No.

9 Q. And the only basis for your claim that NETCO
10 agreed to indemnify TTC was based on what Frank Skryd
11 told you that Ian Gorman told him, correct?

12 A. That was the first I had heard of that. I
13 later talked to Ian Gorman, and he said that -- he
14 confirmed that to me.

15 Q. Oh. He did?

16 A. Yes.

17 Q. Okay. When was that?

18 A. At a lunch meeting some months later.

19 Q. Early 2000?

20 A. I don't believe it was early 2000. I believe
21 it was later in 2000.

22 Q. Okay. Where was the lunch meeting?

23 A. In Clearwater.

24 Q. For what?

25 A. Just a meeting of Frank and Ian and I for

[Page 207]

1 Q. So now it's 2000 or 2001 when you talked to
2 Gorman?

3 A. Yes.

4 Q. But specifically Gorman told you this at a
5 lunch with Frank Skryd and yourself?

6 A. Yes.

7 Q. And was Frank Skryd present when Gorman told
8 you this at lunch?

9 A. I believe so, yes.

10 Q. And what specifically did Gorman tell you in
11 this regard?

12 A. I said I can't believe that, you know, Bill
13 made this deal, and he said yeah, I can't believe it,
14 either. I was there.

15 Q. Anything else that he stated?

16 A. No.

17 Q. You've also alleged that after defendants
18 arranged for your termination from TTC that NETCO's
19 attorneys threatened to press baseless criminal charges
20 against you in retaliation for your involvement with
21 National. What baseless criminal charges are you
22 talking about?

23 A. They claimed that they were going to go to the
24 local prosecutor and seek criminal charges on the basis
25 of trade secret infringement and whatever else they

[Page 206]

1 lunch.

2 Q. Just a friendly meeting?

3 A. It was.

4 Q. Did you fly to Clearwater?

5 A. Not for the purpose of that meeting, no.

6 Q. What were you down there for?

7 A. Probably one of my depositions or some part of
8 the -- the lawsuit against TTC.

9 Q. So when you were suing TTC, you think you went
10 to lunch with Gorman and Skryd while you were down there
11 for that lawsuit?

12 A. If not for that lawsuit, there were other
13 reasons that I was in Tampa in 2000, 2001, and 2002.

14 Q. Well, we're talking about 2000. Why else were
15 you down in Tampa or the Clearwater area?

16 A. If it was in 2000, that would have been
17 related to the lawsuit.

18 Q. I'm not guessing when it is, Mr. Beamer. You
19 just told me it was in 2000. That's my question. Was
20 it in 2000 like you previously told me?

21 A. I'm saying it was after I had first been told
22 this by Frank Skryd and then I got it confirmed later
23 with Ian Gorman directly, and that was at a luncheon
24 after -- some months after I had been told this by Frank
25 Skryd, and so that could have been into 2001.

[Page 208]

1 could find.

2 Q. Who told you this?

3 A. My attorney.

4 Q. Mark Fitch?

5 A. Mark Fitch, yes.

6 Q. Is that specifically what you remember him
7 saying?

8 A. Yes.

9 Q. Did they ever do that, to your knowledge?

10 A. I don't -- I don't know whether they went to
11 the prosecutor. I know I was never charged with
12 anything.

13 Q. Did he specifically state which of NETCO's
14 attorneys made this remark?

15 A. I believe it would have been David Skidmore,
16 but I -- I don't know for a fact which of NETCO's
17 attorneys made that remark.

18 Q. He just told you that NETCO's attorneys
19 threatened to do this, is that right?

20 A. My recollection is that it was David Skidmore
21 that he said had -- had made the threat.

22 Q. Any other baseless criminal charges that
23 NETCO's attorney threatened you with besides that?

24 A. It was just that one time that they made the
25 claim that they were going to go to the prosecutor. I

Deposition of Al Beamer

[Sheet 53, Page 209]

1 remember trade secrets. I don't remember if there were
 2 any other claims that they were going to come up with.
 3 Q. Who told you that John Baumgart would spend
 4 any amount of money necessary to get you regardless of
 5 the legal merits?
 6 A. Bill Andrews.
 7 Q. When did that conversation occur?
 8 A. During that deposition meeting on December
 9 2nd.
 10 Q. The meeting where he asked you to go into
 11 another room and he made the other statements?
 12 A. Yes.
 13 Q. So that was all part of the same conversation?
 14 A. Yes.
 15 Q. You just didn't mention it before?
 16 A. It was all part of the same.
 17 Q. So there were -- there were no witnesses to
 18 that remark, either, correct?
 19 A. Just Bill Andrews and I.
 20 Q. You also have that NETCO filed motions for
 21 civil and criminal contempt against Beamer, a non-party,
 22 in National v. Rivera. Again, you've admitted that you
 23 were a party, correct?
 24 A. That's correct.
 25 Q. So that's an inaccurate statement?

[Page 210]

1 A. The part about being a party is inaccurate.
 2 The part about them filing the lawsuit is not.
 3 MR. HABER: I'll object because I'm not sure
 4 that it's inaccurate on the docket. I don't think he
 5 was named as an individual defendant at that time.
 6 There was an attempt to amend.
 7 MR. SHOEMAKER: Well, he was certainly part
 8 of National, as being an owner of National.
 9 MR. HABER: As a shareholder of National, but
 10 he was not individually named as a defendant at the
 11 time that the lawsuit was filed, nor was he an
 12 individual defendant at the time the settlement
 13 agreement that you've referenced was submitted to him.
 14 I know there was an attempt to amend, according to the
 15 document.
 16 MR. SHOEMAKER: Well, Mr. Beamer obviously
 17 thinks he was a party.
 18 MR. HABER: Well, you get -- he had to defend
 19 himself in a contempt proceeding, but what
 20 Mr. Beamer --
 21 MR. SHOEMAKER: This is prior to --
 22 MR. HABER: What Mr. Beamer thinks and what
 23 the docket and the public record reflect are two
 24 different things.
 25 MR. SHOEMAKER: Okay. Let me state it a

[Page 211]

1 different way, then.
 2 Q. (By Mr. Shoemaker) Why do you think you were
 3 a party to this?
 4 A. I -- I know I was named as a witness, and I
 5 know I was a shareholder of -- of National. I was
 6 certainly interested in the outcome of the case.
 7 Whether I was a named defendant or not I guess was part
 8 of the minutiae that I didn't remember four years ago.
 9 Q. Okay. So motions for civil and criminal
 10 contempt were -- were filed against you in this matter,
 11 correct?
 12 A. Yes.
 13 Q. As well as other individuals, correct?
 14 A. Yes.
 15 Q. Were there any merit -- was there any merit to
 16 any of the contempt motions filed by NETCO against any
 17 individual?
 18 MR. HABER: Objection. It calls for a legal
 19 conclusion.
 20 You can answer if you know.
 21 Q. (By Mr. Shoemaker) It doesn't call for a
 22 legal conclusion at all if you've seen it.
 23 MR. HABER: Is there merit to a contempt
 24 motion; is that the question?
 25 Q. (By Mr. Shoemaker) I'll ask you differently.

[Page 212]

1 Did the court grant any of NETCO's motions for contempt
 2 against any individual in the Rivera matter?
 3 MR. HABER: Objection. It's a matter of
 4 public record.
 5 You can answer if you know.
 6 A. I'm not sure. I know that they didn't file --
 7 that I was dismissed from the case.
 8 Q. (By Mr. Shoemaker) You're telling me you're
 9 not aware that Rivera was found to be in contempt of
 10 that order?
 11 A. I know there were -- there were orders and
 12 judgements and things like that, and I -- I was
 13 certainly more interested and involved in those that
 14 affected me personally. I don't remember specifically
 15 as to that order or as to that contempt motion whether
 16 that or something else was found against Tony Rivera or
 17 National.
 18 Q. Do you not think if something was found
 19 against National that they were in contempt that that
 20 affected you?
 21 A. I -- as I say, I was the -- the contempt case
 22 against me was -- was dismissed. It was found --
 23 judgment was in my favor.
 24 Q. Okay.
 25 A. Civil and criminal.

Deposition of Al Beamer

[Sheet 54, Page 213]

1 Q. And you're telling me as we sit here today
2 you're not aware if anybody else, National or Rivera,
3 was found to be in contempt, correct?

4 A. I don't remember what was the outcome of that
5 civil contempt or criminal contempt matter exactly
6 except that I wasn't found guilty.

7 Q. Okay. Did you ask for sanctions at that time
8 against NETCO or its attorneys for filing those motions?

9 A. I don't believe so, no.

10 Q. Well, this I don't believe so stuff -- I need
11 a little better answer. Do you recall filing any
12 motions as we sit here?

13 A. No.

14 MR. SHOEMAKER: Can we have this marked,
15 please?

16 (Defendant's Exhibit K was marked for
17 identification.)

18 Q. (By Mr. Shoemaker) Do you recognize
19 Defendant's Exhibit K, Mr. Beamer?

20 A. Yes.

21 Q. And what does that represent?

22 A. It represents billing that was sent to me by
23 my attorney in the contempt matter.

24 Q. Less payments made for attorneys' fees to
25 date, it says 4,000, it looks like the total bill as

[Page 215]

1 A. Yes.

2 Q. Did he state that that was a direct comment
3 from someone or that things weren't going well? What
4 did he tell you?

5 A. He said that -- that NETCO's attorneys had
6 told him that -- that my willingness to waive any
7 potential claim against TTC was a deal-breaker, and he
8 kept using the word deal-breaker as to the settlement of
9 the NETCO/Rivera case.

10 Q. So the word deal-breaker, that quote, that's
11 from your counsel, correct?

12 A. He -- he quoted that to me as coming from
13 NETCO's counsel.

14 MR. HABER: Just so the record reflects, I've
15 let you ask some questions regarding communications
16 with Mark Fitch because they are basically relating
17 those things that were told, but I don't want it to be
18 construed as a blanket waiver of the attorney-client
19 privilege to the extent that one exists.

20 MR. SHOEMAKER: I understand.

21 MR. HABER: All right.

22 Q. (By Mr. Shoemaker) It also states you
23 continued to be harassed and threatened by NETCO and its
24 employees in subsequent months in retaliation for your
25 involvement with National and for use as leverage in the

[Page 214]

1 described on this would have been \$7,225, is that
2 correct?

3 A. Yes, it is.

4 Q. And was that all of the fees that you paid to
5 your attorney regarding the contempt motions?

6 A. I believe it was, yes.

7 Q. And I do not have a copy of the second portion
8 of this, but are you representing that the \$4,000 that
9 has already been paid was paid for the civil and
10 criminal contempt motions?

11 A. Yes.

12 Q. And who was the attorney that handled that?

13 A. Attorney David Parker.

14 Q. And you paid him on an hourly basis?

15 A. I paid him according to this bill.

16 Q. Well, did you give him a flat fee, or did you
17 pay him on an hourly basis?

18 A. I paid him on an hourly basis.

19 Q. Okay. You've also stated that NETCO's
20 settlement negotiations in the Rivera matter were
21 unsuccessful due to the insistence that you had to
22 release your rights. Where did you hear that
23 information?

24 A. From my attorney.

25 Q. Mark Fitch?

[Page 216]

1 NETCO v. Rivera case. What was the continued harassment
2 and threats by NETCO and its employees?

3 A. There was, as I understood, further talk about
4 this filing of the contempt motion, and we're going
5 to -- to make this criminal and you're going to go to
6 prison as a result of the -- of the contempt motion, or
7 as a result of those, we're going to -- we're going to
8 make this bigger, we're going to get you, and --

9 Q. Did they make these threats to you?

10 A. No.

11 Q. Who did they make them to?

12 A. Through Mark Fitch.

13 Q. And the stuff about the criminal contempt
14 we've covered; the stuff about the filing something with
15 the prosecutor we've covered, right?

16 A. Yes.

17 Q. The only thing in addition to that that you've
18 told me is something about that you're going to go to
19 prison on the criminal contempt charge, is that
20 accurate?

21 A. Yes.

22 Q. Mark Fitch told you that's what they said?

23 A. Yes.

24 Q. Did you know what the range of punishment was
25 for criminal contempt in Ohio at that time?